



DESIGN REGULATION AND CRITERIA AGREEMENT

This Design Regulation and Criteria Agreement (the "Agreement") is made this 8th day of June, 2000, by HOME DEPOT U.S.A., INC., a Delaware corporation ("Owner") and SOUTH RIVER CITY CITIZENS, INC., a Texas non-profit corporation ("SRCC").

Recitals

WHEREAS, Owner proposes to develop that certain tract of land more particularly described in Exhibit "A", attached hereto and incorporated herein by reference (the "Property") and construct a building ("Building") which will include construction sales and services, uses accessory thereto, and plant nursery use as defined by the Code of the City of Austin as of the date of this agreement; and

WHEREAS, Owner and SRCC have entered negotiations regarding the zoning, development, construction, operation, and maintenance of the Property as a construction sales and services and plant nursery use; and

WHEREAS, Owner and SRCC desire to evidence their terms in this Agreement to be recorded in the Real Property Records of Travis County, Texas;

NOW, THEREFORE, for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby adopts, and imposes the following design regulations and criteria upon the Property which shall be binding upon, inure to the benefit of and be a burden on Owner, its successors and assigns. This agreement shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

General Provisions

1. Owner shall designate the area to the north of the drainage way, more particularly described in Exhibit "B", attached hereto and incorporated herein by reference, as a conservation easement in favor of the City of Austin (the "City"). The conservation easement will provide that the area will not be developed, except for landscaping, irrigation, landscape maintenance and utilities (stormwater, water quality, water and wastewater, electric, gas, telephone and similar utilities). Owner will not object to a zoning rollback to RR (Rural Residential) for the area described on Exhibit "B" after a certificate of occupancy is issued for the Building. The conservation easement shall go on for perpetuity.
2. Owner agrees to discuss the possibilities with the City and SRCC to determine ways to mitigate rainwater runoff flowing through the Property to Blunn Creek from I-35 and the properties to the east of I-35.
3. Owner shall install a rainwater collection system to collect rainwater flowing off the Building to be constructed on the Property.

4. As long as the Owner stores and sells hazardous materials, in addition to complying with the Austin Fire Department's rules and regulations, Owner will train its employees with up-to-date procedures with regard to potential hazardous spills on the Property. On-site spill kits will be maintained on the Property. Owner will inform representatives of SRCC of its plans for dealing with hazardous spills. Upon request in writing to the Owner and store manager, Owner will make any reports regarding accidental hazardous spills available to the designated representatives of SRCC as registered with the City.
5. Owner agrees to participate in one or more of the City's environmental programs, such as the "Grow Green" program. Furthermore, Owner will make its materials safety data sheets, as required by the Environmental Protection Agency, available to SRCC representatives.
6. Owner will make reasonable efforts to design the Woodward Street driveway in such a way as to discourage the ingress and egress of large vehicles and trailers on the Woodward Street driveway. Furthermore, Owner agrees to make reasonable effort to work with and aid the City and SRCC in designing the Woodward Street driveway so as to make it safe for pedestrian and bicyclist ingress and egress. Owner shall not oppose traffic calming devices or measures proposed by the City which do not unreasonably affect access to the Property. Owner will support neighborhood efforts which don't unreasonably hinder access to make Woodward Street safer for pedestrian and bicycle traffic.
7. Owner shall construct a six-foot wall made of rock, brick, concrete or other masonry material between the driveway and the vegetative buffer parallel to its south property line between the Property and Assumption Cemetery.
8. Owner will make reasonable effort to work with representatives of Assumption Cemetery to determine ways to minimize noise in the rear of the building during funerals.
9. Owner will consult with representatives of the SRCC, and provide the SRCC with drawings of the proposed architectural design of the facade of the Building as it faces Woodward Street. The proposed design should attempt to incorporate architectural features sympathetic to the architecture of Saint Edwards University. Building materials will include native limestone, brick or other masonry products. Owner agrees to notify the SRCC representative of all future major exterior architectural changes.
10. Owner agrees to make reasonable effort to consult with representatives of the SRCC to review the landscaping plan for the Property, including the types of plants and trees the Owner intends to install. Owner will plant primarily native Texas species of plants and trees, as defined by City of Austin regulations. The landscape plan shall comply with the City requirements. Landscaping will be reviewed by representatives of the SRCC, from time to time.
11. Utilities other than drainage provided within the Property will be placed underground.
12. Light poles on the Property will not exceed twenty-four feet in height and will incorporate hooded light fixtures designed to direct light down. Owner agrees to consult with

representatives of the SRCC to discuss possible means to minimize light migration into the adjacent neighborhoods.

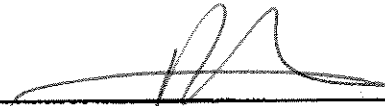
13. Outdoor storage of building materials will be confined to areas behind the Building. Owner agrees to make reasonable effort to insure that stored materials will not be visible from the front of the Building and from Assumption Cemetery, except materials stored in the southwest corner may be partially visible from the Woodward Street driveway and from Assumption Cemetery.
14. Any merchandise displayed outdoors in front of the Building will be kept within an area approximately twenty-five feet (25') wide and parallel to the front of the Building.
15. No temporary buildings or storage units may be kept in front of the Building or in the parking lot, except for those buildings or storage units displayed for sale by Owner. Such buildings and storage units are to be maintained on the western side of the Property, no closer than three hundred fifty feet (350') from Woodward Street. Vehicles and trailers cannot remain on the Property for more than twenty-four (24) hours unless parked behind the Building.
16. Owner will clean the parking lot on a daily basis.
17. Owner shall install a solid wall on the back of the area known as "the garden supply center." No public address system shall be installed outside the building or outside the garden center.
18. Owner shall maintain the water quality and detention ponds on a quarterly basis or more frequently if needed.
19. Store business hours shall be limited to 6:00 am at the earliest and 10:00 pm at the latest.
20. In the event that the owner(s), or any person or entity acting on their behalf, fail to comply with any part of this agreement or attempts to violate any part of this agreement, it shall be lawful for the SRCC to prosecute proceedings at law or in equity, against the owner(s) or such person or entity. In such an event, the SRCC would not be required to post a bond in a preliminary injunction if the SRCC proves a failure to comply. Prior to initiating any proceeding to enforce this agreement, SRCC shall give written notice to Owner and Manager of the alleged violation or failure to comply. Owner shall then have thirty (30) days from receipt of the notice to comply with the agreement or to initiate compliance. No proceeding may be filed or initiated before the expiration of the thirty (30) day notice; provided, however, that in the event such violation or failure to comply cannot be cured within such thirty (30) day period, then the Owner shall not be in default hereunder and SRCC shall not have the right to commence any proceeding against the Owner so long as the Owner commences to cure such violation or failure to comply within the aforesaid thirty (30) day period and thereafter diligently prosecutes the same to completion. Any notices to Owner hereunder, in order to be effective, must be sent via registered or certified mail, return receipt requested, and addressed to Owner as follows: Home Depot U.S.A., Inc., 2800 Forest Lane, Dallas, Texas 75234, Attention: Corporation Counsel - Real Estate, with a copy to the store

manager of the business then being operated on the Property and a further copy to Altman, Kritzer & Levick, P.C., 6400 Powers Ferry Road, Suite 224, Atlanta, Georgia 30339, Attention: Debra M. Thompson, Esq. The Owner may designate a different address for notice purposes from time to time. The party prevailing in a proceeding to enforce this agreement is entitled to recover actually incurred, reasonable attorneys fees from the non-prevailing party.

21. This Agreement may be amended or terminated by joint action of both SRCC and the Owner(s) of the Property subject to the amendment or termination at the time of such amendment or termination. In the event SRCC is ever dissolved or otherwise ceases to exist as a Texas nonprofit corporation or ceases to be registered with the City of Austin, then this agreement shall automatically, without need of further action by either party hereto, be null and void and of no further force or effect and the Owner shall be entitled to record notice of such termination in the Real Property Records of Travis County, Texas.

OWNER:


HOME DEPOT U.S.A., INC.,
a Delaware corporation

By: 
Printed Name: RANDALL H. STEPHENS
Title: SENIOR CORPORATE COUNSEL-REALESTATE

Date: JUN 05 2002

SRCC:

SOUTH RIVER CITY CITIZENS, INC.,
a Texas non-profit corporation

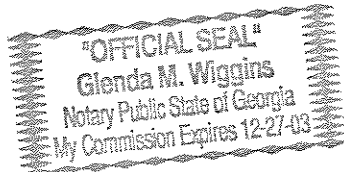
By: 
Printed Name: CLARKE HAMMOND
Title: SRCC PRESIDENT

Date: 6.16.02

THE STATE OF ^{Georgia} ~~TEXAS~~ §
COUNTY OF ^{Cobb} ~~TRAVIS~~ §

This instrument was acknowledged before me on JUNE 5, 2002, by
RANDALL H. STEPHENS, Sr. Corp. Counsel - R.E. of Home Depot U.S.A., Inc., a
Delaware corporation, on behalf of said corporation.

[seal]

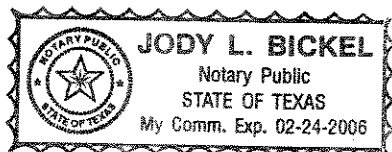


Glenda M. Wiggins
Notary Public of ~~Texas~~ Georgia

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on June 16, 2002, 2000, by
Clarke Hammond, President of South River City Citizens,
Inc., a Texas non-profit corporation, on behalf of said corporation.

[seal]



Jody L. Bickel
Notary Public of Texas

EXHIBIT "A"

Lots 1 and 2 of the Resubdivision of Lots 2, 3 and 4, Block "A", Assumption Cemetery Subdivision, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded under Clerk's File No. 200100204 in the Official Records of Travis County, Texas.

EXHIBIT "B"

Lot 2 of the Resubdivision of Lots 2, 3 and 4, Block "A", Assumption Cemetery Subdivision, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded under Clerk's File No. 200100204 in the Official Records of Travis County, Texas.

LESS AND EXCEPT THEREFROM:

That portion of aforesaid Lot 2 lying within the boundaries of that certain Drainage Easement to Travis County, Texas, shown and described on the subdivision plat of Lots 2, 3 and 4, Block "A", Assumption Cemetery Subdivision, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 96, Page 86 of the Plat Records of Travis County, Texas.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

12-12-2002 04:32 PM 2002240279
BENAVIDESV \$21.00
DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

*Return -
Ammbrust & Brown
100 Congress Avenue,
Suite 1300
Austin TX 78701*