

ORDINANCE NO. 25-915

**Ordinance to Declare Property as Surplus
and Authorizing and Directing its Sale**

WHEREAS, the City of Huntsville, an Alabama municipal corporation ("City"), is the owner of certain real property situated in Huntsville, Madison County, Alabama, containing approximately 10.562 acres, more or less, as more particularly described as follows in **Exhibit "1"** attached hereto (the "Subject Property").

WHEREAS, HOME DEPOT U.S.A., INC., a Delaware corporation, has requested that the City declare the Subject Property as surplus and offer the same for sale.

WHEREAS, it is the judgment and opinion of the Mayor and the City Council of the City of Huntsville that, pursuant to §11-47-20 of the Code of Alabama (1975), that the Subject Property is no longer used or needed for a public purpose.

WHEREAS, it is necessary for the Mayor of the City of Huntsville to enter into that certain Purchase and Sale Agreement between the City of Huntsville, as Seller, and HOME DEPOT U.S.A., INC., as Purchaser, attached hereto as **Exhibit "2"** (the "Agreement"), and pursuant to the terms and conditions therein, the Subject Property will be sold to HOME DEPOT U.S.A., INC. in exchange for Three Million Eight Hundred Thousand and No/100 Dollars (\$3,800,000.00).

WHEREAS, in the judgment and opinion of the Mayor and the City Council of Huntsville, Alabama, that said compensation is fair and reasonable compensation for the Subject Property.

WHEREAS, the sale of the Subject Property, is for a price and exceeds the cost to the City to acquire the same, and the City hereby determines that the sales price for the Subject Property as set forth in the Agreement is at least equal to the fair market value of the Subject Property.

WHEREAS, the Agreement is authorized in accordance with and pursuant to the authority of the constitution and the laws of the State of Alabama including, without limitation, Amendment 772 to the Alabama constitution, as amended; and


WHEREAS, the Mayor of the City of Huntsville is authorized to execute the Agreement, a statutory warranty deed, and all other documents necessary to transfer and convey any interest the City may have in the Subject Property to HOME DEPOT U.S.A., INC.; and

WHEREAS, a general and permanent ordinance is necessary to effect declaration of the Subject Property as surplus property, for the transfer and sale of said surplus property, and to authorize the Mayor to execute a deed to Purchaser for the surplus property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, ALABAMA, AS FOLLOWS:

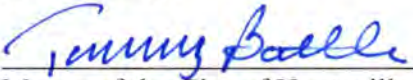
1. The Subject Property is found and determined not to be needed for public or municipal purposes by the City of Huntsville and is hereby declared as surplus property in accordance with the requirements of §11-47-20 of the Code of Alabama (1975); and
2. The sale of the Subject Property, is for a price in excess of the cost to the City to acquire the same, and the sales price for the Subject Property as set forth in the Agreement is found and determined to be at least equal to the fair market value of the land; and
3. The Agreement is hereby authorized in accordance with and pursuant to the authority of the constitution and the laws of the State of Alabama including, without limitation, Amendment 772 to the Alabama Constitution, as amended; and
4. The Mayor of the City of Huntsville is hereby authorized and directed to execute the Agreement, to convey the Subject Property to HOME DEPOT U.S.A., INC. in accordance with the terms of said Agreement, to execute and deliver a statutory warranty deed, and all documents required to close said sale for and on behalf of the City, along with all other instruments, agreements, or other documents as shall be necessary or desirable in connection with the transaction contemplated by the Agreement or in furtherance thereof; and
5. The City Clerk for the City of Huntsville is hereby instructed to publish notice of this Ordinance in accordance with §11-45-8 of the Code of Alabama (1975); and
6. A copy of said ordinance, Agreement, and other real estate closing documents, as legally required, shall be kept on file in the office of the City Clerk of the City of Huntsville, Alabama; and
7. This ordinance shall become effective upon its approval, adoption, enactment, and publication by posting as set forth in §11-45-8(b) of the Code of Alabama (1975).

ADOPTED this the 6th day of November, 2025.



President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 6th day of November, 2025.



Mayor of the City of Huntsville,
Alabama

EXHIBIT "1"
(Legal Description of Subject Property)

Lot 6, according to that Final Plat of Huntsville North Village, as recorded in Plat Book 2025, Pages 280 – 281 in the Probate Records of Madison County, Alabama.

EXHIBIT "2"

(Purchase and Sale Agreement)

[Attach copy of Purchase and Sale Agreement between the City of Huntsville and HOME
DEPOT U.S.A., INC.]

REAL PROPERTY PURCHASE AGREEMENT

THIS REAL PROPERTY PURCHASE AGREEMENT ("**Agreement**") is hereby made and entered into as of the Effective Date (as defined in Paragraph 16 below) by and between **CITY OF HUNTSVILLE**, an Alabama municipal corporation ("**Seller**"), and **HOME DEPOT U.S.A., INC.**, a Delaware corporation ("**Purchaser**"), with reference to the following facts:

A. Seller is the owner of that certain real property consisting of approximately 10.562 acres of land located in the southwest quadrant of North Memorial Parkway and State Road 255/Huntsville Northern Bypass in the City of Huntsville ("**City**"), County of Madison ("**County**"), State of Alabama ("**State**"), depicted on the plat attached hereto as **Exhibit A** (the "**Plat**") and more particularly described on **Exhibit B** attached hereto ("**Land**"), together with (i) all rights, privileges, easements, tenements, hereditaments, rights of way and appurtenances that belong or appertain to the Land and are owned by Seller and not retained by Seller in the Deed (defined below) (collectively, "**Appurtenances**"), and (ii) all buildings, structures and other improvements located on the Land (collectively, "**Improvements**").

B. The Land, Appurtenances, and Improvements are hereinafter collectively referred to as the "**Property**." The Land is part of larger parcel of real property, which larger parcel is more particularly described on **Exhibit B-1** attached hereto and depicted on the Plat (the "**Seller's Land**"). The portion of Seller's Land excluding the Property is referred to in this Agreement as the "**Remaining Property**".

C. Purchaser desires to purchase the Property from Seller, and Seller desires to sell the Property to Purchaser, upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are all hereby acknowledged by each of the parties hereto, Seller and Purchaser agree as follows:

1. Purchase Price.

Subject to and pursuant to the following terms and conditions, Seller shall sell and transfer the Property to Purchaser and Purchaser shall purchase the Property from Seller and pay to Seller the sum of Three Million Eight Hundred Thousand and No/100 Dollars (\$3,800,000.00) ("**Purchase Price**"). No adjustment to the Purchase Price shall be made if the Survey (as defined in Section 7(a)(i) below) reveals that the Property contains more or less acreage than the approximate acreage stated in Recital A above.

2. Matters Pertaining to Earnest Money.

(a) Within five (5) Business Days (as hereinafter defined) after the Effective Date, Purchaser shall deliver an earnest money deposit of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) (the "**Earnest Money**") into escrow with First American Title, National Commercial Services, 3455 Peachtree Road NE, Ste. 1700, Atlanta, GA 30326, Attn: Jon Uhlir

("Title Company"). "Business Days" shall mean each Monday through Friday, excluding United States and State holidays, and "Business Day" shall mean any one of the days otherwise comprising Business Days.

(b) Purchaser may, at its option, direct the Title Company to invest the Earnest Money and/or the Extension Payment (as defined below) in an interest-bearing account designated by Purchaser. All interest accruing on the Earnest Money and/or the Extension Payment shall belong to Purchaser.

(c) If this Agreement terminates at any time prior to the end of the Inspection Period, Title Company shall immediately:

(i) Pay Purchaser all of the Earnest Money, less the sum of One Hundred and No/100 Dollars (\$100.00) ("**Nonrefundable Portion**"), which (i) the Title Company shall pay the Nonrefundable Portion to Seller in consideration of entering into this Agreement and is in addition to and independent of any other consideration or payment provided in this Agreement and (ii) Nonrefundable Portion is nonrefundable to Purchaser under any circumstances and shall be paid to Seller notwithstanding any other provisions of this Agreement if this Agreement terminates;

(ii) Pay to Seller any Extension Payment paid by Purchaser if the Agreement terminates for any reason other than a Return Reason; and

(iii) Pay to Purchaser any Extension Payments paid by Purchaser if the Agreement terminates because of a Return Reason.

(d) If this Agreement terminates after the end of the Inspection Period for any reason other than a Return Reason, Title Company shall immediately disburse the Earnest Money and the Extension Payment, if any, paid by Purchaser to Seller.

(e) Notwithstanding anything to the contrary set forth in this Agreement, if this Agreement terminates for any of the reasons set forth in Sections 7(c), 8(c), 9, 13, 16(a), 18 and 19 of the Agreement (collectively, the "**Return Reasons**" and individually, a "**Return Reason**"), Title Company shall immediately disburse all Earnest Money and Extension Payment, if any, paid by Purchaser to Purchaser less the Nonrefundable Portion, which shall be delivered to Seller.

(f) Upon any termination of this Agreement, Seller and Purchaser shall have no further rights, obligations or liabilities under this Agreement, except for matters that, by the terms of this Agreement, expressly survive termination of this Agreement (collectively, the "**Termination Terms**"). Except as otherwise provided in the immediately preceding sentence, upon the Title Company's receipt of written notice from either party hereto claiming the Earnest Money and/or the Extension Payment pursuant to the other provisions of this Agreement, Title Company shall promptly forward a copy thereof to the other party hereto and, unless such party within ten (10) days of receipt thereof notifies Title Company of any objection to such requested disbursement of the Earnest Money and/or the Extension Payment, the Title Company shall disburse the Earnest Money and/or the Extension Payment in accordance with the provisions of

this Agreement based upon the demand of the party demanding same (it being understood that, where applicable, the Nonrefundable Portion of the Earnest Money shall be delivered to Seller, even if the balance of the Earnest Money is to be returned to Purchaser), and thereupon the Title Company shall be released and discharged from any further duty or obligation hereunder.

(g) The Title Company is expressly stated and intended to be a third-party beneficiary of the operative provisions of this Section 2. If, however, the Title Company requires same, Purchaser and Seller further agree to enter into a separate escrow agreement respecting the Earnest Money and the Extension Payment, provided and so long as such escrow agreement is consistent with the provisions of this Agreement, generally, and, in particular, this Section 2.

(h) The Earnest Money and the Extension Payment, if paid by Purchaser, shall be applicable to the Purchase Price at Closing.

3. Closing.

(a) The consummation of the purchase and sale of the Property contemplated under this Agreement (the "**Closing**") shall be defined as the date that the statutory warranty deed, the form of which is attached hereto as **Exhibit C** ("**Deed**"), conveying the Property to Purchaser is delivered. Provided this Agreement is not sooner terminated, the Closing shall occur upon the earlier to occur of: (i) October 5, 2026, or (ii) on or within thirty (30) days after the expiration of the Approval Period (or such earlier date on which Purchaser notifies Seller that Purchaser waives its Approval Period-related termination right) ("**Closing Date**").

(b) Reserved.

(c) Consistent with the foregoing, Closing shall occur on or prior to the Closing Date. Seller agrees to deliver vacant possession of the Property to Purchaser at Closing in the same condition existing as of the Effective Date (except as may be expressly provided to the contrary in this Agreement), free of any right of possession or claim to right of possession by any party other than Purchaser and in a debris-free condition (including the removal of any construction debris, construction materials or supplies, vehicles, dirt piles, equipment, used drums or tanks and domestic debris), with all Seller's Work (as defined below) completed, and as otherwise required by the terms of this Agreement.

(d) At Closing, the parties shall deliver the following:

(i) Seller shall deliver: (A) the Deed; (B) an affidavit reasonably acceptable to the Title Company and Seller (1) stating that Seller has sole and exclusive possession of the Property, subject only to the Permitted Title Exceptions (as defined below), (2) including a statement as reasonably requested by Title Company so that there are no mechanics' lien exceptions on the Title Policy (as defined below) not caused by Purchaser, and (3) including any other statements as reasonably requested by Title Company in order for Title Company to issue the Title Policy; (C) a non-foreign affidavit; (D) evidence of authority to consummate the sale as reasonably required by the Title Company; (E) a closing statement; (F) one (1) executed and

notarized original counterpart of the REA (as defined below); and (G) any other document reasonably requested by the Title Company in order for the Closing to occur; and

(ii) Purchaser shall deliver: (A) a counterpart of the closing statement; (B) evidence of authority to consummate the sale as reasonably required by the Title Company; (C) one (1) executed and notarized original counterpart of each of the REA; and (D) any other document reasonably required by Title Company for the Closing to occur.

Neither party shall be required to appear at Closing. Unless this Agreement terminates prior to the Closing pursuant to the terms and provisions of this Agreement, each party shall timely deliver to Title Company all funds and documents necessary for the Closing to occur on the Closing Date. Unless electronically recorded by the Title Company, the Title Company shall deliver the original documents to Local Agent for recording immediately following the consummation of the transaction.

4. Closing Costs. Seller shall pay (a) its own attorneys' fees; (b) any state, local or other recording taxes, documentary stamp taxes, transfer taxes and similar taxes (but excluding nominal recording costs) payable in connection with the conveyance of the Property to Purchaser; (c) all recording fees on recordable documents, and (d) one-half of the escrow fees charged by Title Company. Purchaser shall pay (a) its own attorneys' fees; (b) any premiums charged for an ALTA Owner's Policy of Title Insurance for the Property in an amount acceptable to Purchaser (the "**Title Policy**"), including all endorsements, search and exam fees; (c) the cost of the Survey; (d) except as otherwise provided in this Agreement, the costs of any tests, inspections and investigations performed by Purchaser and (e) one-half of the escrow fees charged by Title Company. Any closing costs not otherwise provided for in this Agreement shall be paid in the following priority: (x) by the applicable party as provided in any other provision of this Agreement, if any, or if any such cost is not so addressed, (y) by the party legally responsible therefor or if no law applies, (z) according to prevailing custom for commercial transactions in the County and State.

5. Prorations.

(a) Seller shall be responsible for and shall promptly pay all utility charges and similar charges with respect to the Property, if any, attributable to the period up to and including the Closing Date. Seller shall be responsible for payment of all real property ad valorem taxes, special taxes, assessments, deposits and personal property taxes attributable to any year prior to the year of Closing. All real property ad valorem taxes, special taxes, assessments, deposits and personal property taxes for the year of Closing shall be prorated (employing a 365-day year) between Purchaser and Seller as of the Closing Date based upon the most recently available property assessment. If such assessment is not available for the year in question, taxes shall be prorated when the amount thereof can be ascertained. If increased taxes are, after Closing, determined to be due for the year in which Closing occurs, then each party shall be obligated for the payment of its pro rata share of such additional taxes. If increased taxes are, after Closing, determined to be due for any year prior to the year in which Closing occurs, Seller shall be obligated for the payment of such additional taxes. If the proration at Closing is based on tax assessments and bills covering a tax parcel that is larger than but includes the Property, then the

portion of such tax bills pertaining to the Property shall be determined by allocation on a per-acre basis, with appropriate allocation of taxes attributable to improvements on the assessed parcel based upon the location of same on the parcel (so that Purchaser pays no taxes attributable to improvements that are not located on the Land). If the Property is subject to any so-called "rollback" tax or other tax pursuant to which real estate taxes for prior years may be increased as a result of a change of ownership, change of use or change in zoning of the Property, then Seller shall be obligated for the payment of such additional taxes.

(b) All prorations, if and to the extent known and agreed upon as of the Closing, shall be paid by Purchaser to Seller (if the prorations result in a net credit to Seller) or by Seller to Purchaser (if the prorations result in a net credit to Purchaser) by increasing or reducing the cash to be paid by Purchaser at the Closing. Any such prorations not determined or not agreed upon as of the Closing shall be paid by Purchaser to Seller, or by Seller to Purchaser, as the case may be, in cash as soon as practicable following the Closing.

(c) If any errors or omissions are made regarding adjustments and prorations pursuant to this Section 5, the parties shall make the appropriate corrections promptly upon the discovery thereof. If any estimates are made at the Closing regarding adjustments or prorations, the parties shall make the appropriate correction promptly when accurate information becomes available. Any corrected adjustment or proration shall be paid in cash to the party entitled thereto.

(d) The provisions of this Section 5 shall survive the Closing and the delivery and recordation of the Deed.

6. Inspections Prior to Closing.

(a) Purchaser and its representatives, consultants and contractors shall at all times before the Closing have the privilege, opportunity and right of entering upon the Property, including, without limitation, any buildings and other improvements located thereon, in order to inspect and examine same and perform boundary, topographic and like surveys and inspections of the Property, as well as other tests and inspections of same (including, without limitation, geotechnical and environmental tests, studies and examinations, soil tests, borings, percolation tests and other tests needed to determine surface, subsurface and topographic conditions).

(b) Seller represents and warrants to Purchaser that (i) any and all approvals, consents and/or licenses necessary to allow Purchaser to enter upon the Property to perform the inspections, tests, studies and examinations contemplated hereby have been obtained, and (ii) Purchaser has the lawful right to such entry by virtue of the provisions of such consents, approvals and/or licenses.

(c) Purchaser shall conduct any such entries onto the Property in a manner that minimizes, to the extent reasonably possible, interference with the conduct of any business or businesses currently being conducted thereon. Purchaser agrees that it will reasonably repair any damage to the Property resulting from surveys, tests and inspections performed in accordance herewith if Purchaser does not purchase the Property, exclusive of normal wear and tear and customary effects of the surveys, tests and inspections. Purchaser shall also defend, indemnify

and hold harmless Seller from and against any and all loss, cost, damage, expense or liability arising out of Purchaser's activities on the Property and/or the cost thereof, or out of any gross negligence or willful misconduct of Purchaser in performing the surveys, tests and inspections contemplated hereby, provided that, without expanding by implication the scope of the foregoing indemnity, the foregoing agreement to indemnify and hold harmless shall not apply to any loss, cost, damage, expense or liability arising out of or related to (i) any condition upon or under the Property not caused by Purchaser, (ii) any violation of law existing with respect to the Property not caused by Purchaser, or (iii) the negligence or willful misconduct of Seller or its shareholders, officers, directors, employees, agents or contractors. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

(d) Purchaser agrees to cause each of its consultants, contractors or representatives conducting any studies or investigations on the Property pursuant hereto to maintain and have in effect commercial general liability insurance with (i) limits of not less than One Million and No/100 Dollars (\$1,000,000.00) for personal injury, including bodily injury and death, and property damage, and (ii) Seller named as an additional insured party. Upon Seller's request, Purchaser shall deliver to Seller a copy of the certificate of insurance effectuating the insurance required hereunder prior to the commencement of such activities, which certificate shall provide that such insurance shall not be terminated or modified without at least ten (10) days' prior written notice to Seller (to the extent commercially available). Notwithstanding the foregoing, Purchaser may, so long as its net worth equals or exceeds One Hundred Million and No/100 Dollars (\$100,000,000.00), elect to provide all or any portion of the required liability insurance by means of self-insurance (and, in any case and without regard to net worth, Purchaser may at all times maintain a reasonable deductible with respect to any liability insurance otherwise carried in satisfaction of the requirements set forth herein).

7. Conditions Precedent.

(a) Inspection Period. It is specifically understood that Purchaser presently contemplates construction of, among other improvements, a home improvement store, with a garden center facility and a tool rental facility, and all parking facilities therefor and other site improvements and appurtenances thereto on the Property (collectively, "**Project**"), on the Property. It is, therefore, specifically agreed that Purchaser's obligations hereunder are conditioned upon the satisfaction of each of the following conditions within the Inspection Period (any of which conditions may be waived by Purchaser upon giving written notice of such waiver to Seller). Purchaser may, at its option, elect to terminate this Agreement at any time during the Inspection Period by giving written notice to Seller on or before the last day of the Inspection Period. For purposes of this Agreement, the "**Inspection Period**" shall mean the period of time between and including the Effective Date and the date that is one hundred twenty (120) days after the Effective Date. In addition to any other conditions specified elsewhere in this Agreement, Purchaser's obligations under this Agreement, including, without limitation, its obligation to close, are subject to and contingent upon the following conditions:

(i) Purchaser obtaining the following items prior to the expiration of the Inspection Period: (A) survey of the Property (a "**Survey**") prepared by a licensed professional land surveyor, (B) inspection reports and certifications respecting such Survey prepared by the

surveyor as reasonably required by Purchaser and/or the Title Company, and (C) feasibility studies and any other appraisals, inspections, tests or studies desired by Purchaser, showing that the Property is satisfactory to Purchaser, as determined in its sole and absolute discretion. Seller and Purchaser agree that the acreage of the Property and the boundary lines thereof shall be conclusively determined by the Survey. Seller hereby agrees, within five (5) days after the Effective Date, to deliver to Purchaser all topographical, engineering, geotechnical, environmental and other studies, tests, reports, surveys, plans, agreements, leases, licenses, permits, maps, certificates of occupancy, tax statements, applications or other submittals made to the City regarding the annexation, rezoning and/or subdivision of Seller's Land or to any governmental agency or authority related to any environmental condition, work, or mitigation and other like materials with regard to Seller's Land (including, without limitation, any wetlands delineation reports) in Seller's possession or control, including, without limitation, any document, instrument or correspondence with any person, entity or governmental authority that may affect the Property or Purchaser following the Closing.

(ii) Purchaser receiving confirmation that (A) all utility lines necessary for the construction and operation of the Project, including but not limited to water, telephone, sanitary sewer, storm sewer, natural gas and electricity lines, will be available at the boundaries of the Property and will be available, sufficient and satisfactory, in Purchaser's sole discretion, for Purchaser's use in connection with the development, construction and operation of the Project, and (B) valid recorded easements and agreements are in place to provide all such utilities to the Property and to allow all storm water flowing from the Property through and to any off-site storm water management system and facilities. Additionally, the obligations of Purchaser to close hereunder are conditioned upon Purchaser's ability to obtain all such utility services solely upon the payment of such tap-on fees and user charges as are normally and uniformly imposed by the utility companies or governmental agencies supplying such services in the County and City.

(iii) Purchaser determining to Purchaser's satisfaction that the Property is suitable for the Project and that there exist no facts, matters or circumstances concerning the Property that are unacceptable to Purchaser in Purchaser's sole and absolute discretion, including, without limitation, Purchaser's satisfaction regarding (A) title and survey matters, (B) utility, detention and engineering matters, and (C) the physical condition of the Property, including, without limitation, Purchaser's receipt of (1) soil test studies with regard to the Property confirming that suitable soil conditions exist for construction of Purchaser's typical "Home Depot" home improvement store using conventional shallow spread footings and slab on grade construction without any upgrades to foundations or footing structures required and that are in all other respects acceptable to Purchaser and (2) such tests and studies as Purchaser may deem necessary or appropriate to determine the environmental condition of the Property, such tests and studies to include, without limitation, so-called "Phase I" environmental site assessments and such additional testing, including so-called "Phase II" environmental site assessments, as determined by Purchaser to be necessary in Purchaser's sole and absolute discretion, and all of which tests, studies, assessments, audits and reports confirm the absence of any and all forms of environmental surface, subsurface, groundwater and/or other contamination and are in all other respects acceptable to Purchaser.

(iv) At or prior to Closing, Seller, Purchaser, and API Huntsville, LLC, or its affiliates ("API") (as well as any secured lenders of Purchaser and API and any other necessary third parties) shall each execute, deliver and at Closing record or cause to be recorded a Restriction and Easement Agreement ("REA") with regard to the Property and the Remaining Property (collectively, the "Shopping Center"). The parties agree to negotiate in good faith in an effort to agree upon the form of the REA prior to the expiration of the Inspection Period. Purchaser shall prepare the first draft of the REA using a form of REA that has previously been agreed upon by Purchaser and API. The Remaining Property is intended to consist of: (a) five (5) outparcels, (b) an approximately 8.976 acre parcel to be developed as in-line retail space (the "Developer Tract"), and (c) an approximately 11.018 acre parcel to be developed as a nationally-recognized full line department store and supermarket (the "API Tract"). The REA shall, without limitation:

(A) establish reciprocal appurtenant easements in favor of the Property and the Remaining Property for vehicular and pedestrian ingress and egress and utilities (including, without limitation, storm water detention);

(B) establish reciprocal appurtenant easements for parking in favor of the Developer Tract and the API Tract (and at Seller's option, the outparcels); provided, however, there shall be no reciprocal parking easements benefiting or burdening the Property;

(C) contain exclusive use provisions for the benefit of the Property and the API Tract and contain certain prohibited use provisions of the type typically found in a Home Depot shopping center which is co-anchored with a nationally-recognized full line department store and supermarket;

(D) provide for maintenance and repair obligations of the parties with regard to the shared driveways and master detention facilities and other common areas within the Shopping Center, if applicable, and shall provide that each party shall be responsible at its sole cost and expense to maintain its own driveways and parking areas (unless the parties agree in writing to the contrary);

(E) provide that: (i) construction activities shall be conducted in compliance with all applicable laws, ordinances, rules and regulations of any governmental authority, including, without limitation, all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster and environmental protection laws, and (ii) such construction shall only be permitted at such time as all necessary permits, licenses, and approvals have been obtained to permit same, and (iii) any architect, general contractor, subcontractor, or other business performing any work in connection with the Project shall obtain all necessary permits, licenses, Approvals or Final Approvals (later defined) to construct the same;

(F) provide that subsequent owners of Lots 7 and 8, as shown on the Plat, reimburse Purchaser for their proportionate share of the cost incurred by Purchaser to construct the access drive located on the Property located between said

Lots 7 and 8, which shares shall be 11.83% for Lot 7 and 11.35% for Lot 8, which payment shall be due to Purchaser within thirty (30) days after the commencement of construction upon the applicable lot.

(v) Purchaser satisfying itself as to such other matters as Purchaser in its sole and absolute discretion deems to be necessary or desirable for the development, construction and operation of the Project.

(b) Approval Period. Purchaser's obligation to close shall at all times be conditioned upon the satisfaction of each of the following conditions (unless Purchaser waives such conditions in its sole and absolute discretion) on or before the period ending two hundred forty (240) days after the expiration of Inspection Period (the period from the expiration of the Inspection Period to said date, as the same may be extended, is referred to herein as the "**Approval Period**"):

(i) The procurement of all necessary Approvals (as hereinafter defined) required for the development, construction and operation of the Project, it being acknowledged and agreed by the parties that the foregoing conditions shall not be considered satisfied until all Approvals have become Final Approvals (as hereinafter defined). "**Approvals**" shall mean all entitlements, permits (including, without limitation, building permits), licenses, variances, approvals, relief, assurances and incentives, whether ministerial, discretionary or otherwise, and whether foreseen or unforeseen, from governmental, quasi-governmental and utility agencies or authorities that are necessary for the development, construction and operation of the Project and to achieve Purchaser's Operational Objectives (as defined below), including, without limitation, any permits, licenses, variances and approvals pertaining to site plan approvals, land use amendments, engineering permits, access, traffic and department of transportation permits (including, without limitation, receipt of any and all permits and approvals necessary to permit "full-in" and "full-out" vehicular ingress and egress to and from the Project), sewer and storm water management permits, off-site permits, parking variances, any required comprehensive land plan amendments, any amendments to or approvals required under any applicable development of regional impact plan, vested development rights, satisfaction of all concurrency requirements and any other permits, licenses, variances and approvals otherwise pertaining to buildings, occupancy, signs, driveways (including ingress and egress to public thoroughfares), wetlands, endangered species and environmental controls, including Purchaser's NPDES Permit (as defined below). When such Approvals have been received and are valid, irrevocable, unqualified and unconditioned (except for such qualifications and/or conditions that are acceptable to Purchaser in its sole and absolute discretion), and are no longer subject to appeal, challenge or litigation (or if any such Approval has been appealed, challenged or litigated, such appeal, challenge or litigation has been resolved to Purchaser's satisfaction, which determination shall be made in Purchaser's sole and absolute discretion), such Approvals shall be referred to as "**Final Approvals**." As used herein, the term "**Operational Objectives**" shall collectively mean and consist of the right to (A) sell the types of items currently being sold by "Home Depot" home improvement stores in the United States; (B) use the Property in accordance with a zoning designation which allows (1) staging and temporary storage of merchandise around the perimeter of Purchaser's proposed building, (2) unloading merchandise from flatbed trucks, (3) the sale of seasonable items from the parking lot, including the sale of Christmas trees in November and December, (4) unlimited

delivery rights, (5) unlimited sales from an outdoor enclosed garden center, (6) unlimited sales and display of product from the front perimeter sidewalk, and (7) the sale of food outdoors and/or indoors, accompanied by tables and seating for eating purposes; and (C) to construct, operate and maintain its typical exterior store signs and pylon and monument signs which Purchaser deems necessary for the Project. Seller agrees at all times to cooperate fully with Purchaser's efforts to obtain the Approvals and shall execute and deliver to Purchaser all documentation related thereto within five (5) business days of receipt of same and promptly take all action as is reasonably necessary to procure the same. Notwithstanding anything to the contrary contained herein, if for any reason Purchaser elects to pursue permits and approvals for a use other than a home improvement store (whether in addition to or in lieu of Approvals for a home improvement store), any submittals for such permits and approvals shall be deemed Approvals and Final Approvals for all purposes of this Paragraph 7(b). Notwithstanding the foregoing, nothing contained herein shall in any way be construed to require the City or any other governmental authority to waive, modify, expedite, or deviate from established policies, protocols, procedures governing the issuance of any Approval or Final Approval.

Purchaser may elect to extend the end of the Approval Period for one (1) additional period of sixty (60) days by the delivery of written notice to Seller on or before the last day of the Approval Period and depositing with the Title Company within five (5) Business Days after the exercise of such extension an additional Earnest Money deposit in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) (the "**Extension Payment**"), which Extension Payment shall be non-refundable to Purchaser (except for a Return Reason) but shall be applicable to the Purchase Price. In the event that Purchaser elects to extend the Approval Period, all references herein to the Approval Period, shall mean the Approval Period, as extended. Purchaser may, at its option, elect to terminate this Agreement at any time during the Approval Period by giving written notice to Seller on or before the last day of the Approval Period, if Final Approvals have not been obtained.

(c) Additional Conditions. In addition and without waiving any rights or remedies available to Purchaser in the event of Seller's default, Purchaser's obligation to close shall at all times be conditioned upon the following (unless Purchaser waives such conditions):

(i) Seller's performance of all of its obligations under this Agreement in accordance with the provisions hereof;

(ii) All of Seller's warranties and representations hereunder are true and correct in all material respects;

(iii) The absence of any material change in the status of the use, title, occupancy or physical condition of the Property (including, without limitation, any such change caused by casualty or condemnation), unless caused by Purchaser or its consultants or contractors and except for Seller's Work, between the Effective Date and the Closing (inclusive) that has not been approved in writing by Purchaser;

(iv) The execution and delivery of the REA by all necessary parties (including, without limitation, lenders) in the form agreed upon by all such parties during the Inspection Period; and

(v) The completion of Seller's Pre-Closing Work in accordance with this Agreement.

Should any one or more of the contingencies set forth in clauses (i) through (v) of this Section 7(c) above not be satisfied or waived in writing by Purchaser (in its sole discretion) on or before the Closing Date, then Purchaser may terminate this Agreement by giving written notice to Seller, whereupon Title Company shall immediately deliver the Earnest Money and the Extension Payment to the appropriate party as provided in Section 2 of this Agreement, and Termination Terms shall apply, which termination shall be in addition to exercising any other remedy available to Purchaser hereunder in the event of a failure of a contingency due to Seller's default hereunder.

8. Conveyance of Title.

(a) The title to the Property to be conveyed by Seller to Purchaser must be good and marketable fee simple title insurable by the Title Company under the Title Policy at standard rates, free and clear of all liens, encumbrances, and other exceptions to title, except the Permitted Title Exceptions (as hereinafter defined). The legal description of the Property to be incorporated into the Deed shall be as set forth on **Exhibit B**. Seller covenants to deliver to Purchaser at Closing an affidavit acceptable to Purchaser and the Title Company stating that Seller has sole and exclusive possession of the Property, subject only to the Permitted Title Exceptions, and stating that either (i) there have been no improvements, additions, alterations, repairs or any changes of any kind whatsoever made to the Property during the twelve (12) months immediately preceding Closing (or such longer period as may give rise to liens under applicable law), or (ii) if there have been any such improvements or repairs, that all lienors or potential lienors in connection with such improvements or repairs have been paid in full, it being specifically understood that Seller shall be responsible for satisfying all Title Company requirements and conditions to the issuance of the Title Policy free of any exception related to mechanic's lien claims related to the Seller's Pre-Closing Work. Seller shall also supply to Purchaser at or prior to Closing such other documentation as may be reasonably required by Purchaser, including, without limitation, a non-foreign affidavit and evidence of authority to consummate the sale, all in form and substance acceptable to Title Company. Seller shall also execute and deliver in connection with the Closing documentation as reasonably required by Purchaser or the Title Company to allow for issuance of the Title Policy without exception for any lien under any commercial real estate broker lien act (and as necessary to allow for issuance of an endorsement to such policy insuring against any liens under any such act filed after Closing for commissions earned prior to or simultaneously with Closing) and such other documentation as Purchaser may reasonably require, including, without limitation, any affidavits, certificates and other information (A) required to satisfy any City, County or State disclosure law or requirement, and (B) sufficient to satisfy requirements of the Internal Revenue Code (including Sections 1445 and 6045 thereof, as amended) and the withholding requirements of any comparable laws of the State. Further, the parties shall each execute and deliver such tax forms and like documents as are usual, customary and/or necessary for commercial real estate closings in the City, County and/or State.

(b) During the Inspection Period, and provided this Agreement has not sooner been terminated, Purchaser shall obtain a commitment for the issuance of an owner's Title Policy in the amount of the Purchase Price or such other amount as may be required by Purchaser to be issued by Lanier Ford Shaver & Payne, PC ("**Local Agent**") as local agent for the Title Company

(“**Commitment**”). The Commitment shall reflect that the Title Policy will provide Purchaser with affirmative insurance with respect to all appurtenant easements that benefit the Property (whether in existence prior to, or created at, Closing) which shall be shown as a separate insured parcel in Schedule A to the Commitment.

(c) Purchaser shall have until ninety (90) days after the Effective Date to examine the Commitment and Survey and otherwise to examine title to the Property, and Purchaser may notify Seller of any objectionable matter or defect that affects the marketability or insurability of the title to the Property or that adversely affects the use of the Property for the Project (collectively, the “**Title Objections**”). Seller shall have seven (7) business days after receipt of such notice from Purchaser of the Title Objections to deliver written notice to Purchaser that it either agrees to cure the Title Objections before Closing or to advise Purchaser that it will not cure the Title Objections; provided, however, Seller may not disagree to remove any Removeable Monetary Encumbrances (as defined below). Seller’s failure to respond within such 7-day period shall be deemed Seller’s refusal to cure the Title Objections, but Seller’s agreement to remove any Removeable Monetary Encumbrances prior to the Closing. If Seller is does not agree to remove or cure any of the Title Objections, then at Purchaser’s option, Purchaser may either (i) accept title to the Property despite the existence of such matter or (ii) terminate this Agreement, in which event the Title Company shall immediately refund to Purchaser all Earnest Money as provided in Section 2 of this Agreement and the Termination Terms shall apply. For purposes of this Agreement, “**Removable Monetary Encumbrances**” shall mean (A) mortgages, deeds of trust, instruments to secure debt and similar security interests, monetary liens or other similar encumbrances upon the Property, (B) mechanics’ or materialmen’s liens filed against the Property prior to Closing (excluding any mechanics’ or materialmen’s liens filed against the Property as a result of Purchaser’s inspections of the Property, which Purchaser shall cause to be promptly released) and (C) any other lien or other monetary encumbrance that encumbers the Property and that may be removed by the payment of a sum certain, such as (without limitation) judgment liens, tax liens and the like. If at Closing, Seller fails to remove any Removable Monetary Encumbrances, then Purchaser may remove such Removable Monetary Encumbrances and reduce the Purchase Price in accordance with the amount of money expensed. Any title exceptions to the Property revealed by the Commitment or Survey to which Purchaser does not object, or any Title Objections which Purchaser subsequently waives (or is deemed to have waived) are referred to herein as “**Permitted Title Exceptions**.” Purchaser hereby agrees that the Plat, REA and the Repurchase Option (later defined), all in the form approved by Purchaser in accordance with this Agreement, shall be Permitted Title Exceptions. If any title exceptions or survey matters are disclosed by updates of the Commitment and/or Survey or other title “date-downs” that affect the marketability or insurability of the title to the Property or that adversely affect the use of the Property for the Project (as determined by Purchaser in its sole and absolute discretion), Purchaser may after the discovery thereof notify Seller, in which event Seller may (but shall not be obligated to) procure a cure for same, and upon the failure of Seller to effectuate a cure, then Purchaser may elect either of the options set forth in subclauses (i) and (ii) above. Notwithstanding anything herein contained to the contrary, any existing mortgages, deeds of trust, deeds to secure debt, mechanics’ or materialmen’s liens, judgment liens or similar monetary liens and encumbrances granted or created by Seller, as well as any tenants or other parties in possession of all or any portion of the Property, shall be automatically deemed matters to which objection is made by Purchaser, regardless of whether Purchaser gives written notice of objection thereto to Seller, and Purchaser under no circumstances shall be deemed to have waived any such matters, nor shall same be considered

Permitted Title Exceptions hereunder, unless such waiver shall be an express waiver in writing executed by Purchaser. Seller shall take such action as is necessary or required to cause the Title Company to issue the Title Policy, subject only to the Permitted Title Exceptions, to Purchaser at Closing. Seller and Purchaser shall approve the final list of Permitted Title Exceptions for purposes of the Deed and Title Policy during the Inspection Period.

(d) As a condition to Closing, the Title Company shall be prepared to issue to Purchaser at Closing the Title Policy (which may be in the form of a proforma policy sent electronically subject to an electronic or lack of signatures endorsement) in an amount equal to the Purchase Price and containing no exceptions other than the Permitted Title Exceptions. The Title Policy shall include the following endorsements or affirmative insurance, as the case may be, unless otherwise approved by Purchaser in writing: (i) an extended coverage endorsement removing the general or standard exceptions from the Title Policy, excluding liens for taxes not yet due and payable and standard mineral rights exception; (ii) an access endorsement insuring that the Property has unrestricted and unqualified legal vehicular access to all adjacent publicly dedicated roadways either directly or via perpetual easement; (iii) a contiguity endorsement insuring contiguity between all parcels comprising the Property with no gaps or gores and between the Property and adjacent parcels to which the Property has appurtenant easements and rights; (iv) an ALTA zoning endorsement form 3.2.06 (amended to include parking and loading docks); (v) a "same as" survey endorsement; (vi) an owner's comprehensive endorsement; (vii) a tax parcel endorsement (if and when available); (viii) affirmative insurance insuring Purchaser (and the Property) has the benefit of all easements and appurtenant rights benefiting the Property whether created before or in connection with Closing; (ix) a pending improvements endorsement in an amount determined by Purchaser prior to Closing; (x) a utility facilities endorsement, if available; (xi) a covenant enforceability endorsement; and (xii) a minerals and other subsurface substances endorsement.

9. Casualty and Condemnation.

(a) If, at any time between the Effective Date and Closing (inclusive), all or any portion of the Property is damaged by casualty or condemned by any legally constituted authority for any public use or purpose, then Purchaser may elect either: (i) to terminate this Agreement, in which event the Title Company shall immediately refund to Purchaser all Earnest Money (except for the Nonrefundable Portion, which shall be paid to Seller as consideration for the rights afforded Purchaser by this Agreement) and the Extension Payment, and the Termination Terms shall apply; or (ii) to collect at Closing (or at Closing receive a credit against the Purchase Price for) all proceeds from any condemnation or from any insurance policies insuring the Property from damage or destruction and have the terms of this Agreement remain in full force and effect and binding on the parties hereto (with Purchaser receiving a credit against the Purchase Price for any deductibles and the amount of any uninsured casualty). In the event of a condemnation in which Purchaser does not elect to terminate this Agreement pursuant to the foregoing terms, then the term Property, as used herein, shall thereafter refer to the Property less and except any portion thereof taken by such condemnation.

(b) In addition (and without limiting Paragraph 9(a) above), Purchaser shall have no obligation to purchase the Property if any casualty, such as (without limitation) earthquake, sinkhole, contamination by hazardous substances or act of God, affects or threatens to

affect the Property so as to make construction or operation of the Project more expensive or so as materially to increase the time it would take to construct the Project, and upon any such occurrence, Purchaser may terminate this Agreement by notice to Seller given at any time prior to Closing, whereupon the Title Company shall immediately refund to Purchaser the Earnest Money (except for the Nonrefundable Portion thereof, which shall be paid to Seller as consideration for the rights afforded Purchaser by this Agreement) and the Extension Payment, and the Termination Terms shall apply.

10. Assignment. Neither Seller nor Purchaser shall assign its interest hereunder without the prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto. Notwithstanding the foregoing, Purchaser may assign in whole or in part Purchaser's rights under this Agreement without the consent of Seller only upon the following conditions: (a) the assignee of Purchaser must be an Affiliate (as defined below) of Purchaser (each a "**Permitted Assignee**"); (b) the Permitted Assignee must expressly assume in writing in an assignment and assumption agreement, all of Purchaser's obligations under this Agreement; (c) a copy of such assignment and assumption agreement is delivered to Seller; and (d) Purchaser notifies Seller in writing of such assignment to such Permitted Assignee at least five (5) business days prior to Closing. No assignment of this Agreement shall release Purchaser from any of its obligations hereunder, and Purchaser and any assignee shall be jointly and severally liable for the obligations of "Purchaser" hereunder. As used in this Section 10, the term "**Affiliate**" means, with respect to any person or entity, any other person or entity that, directly or indirectly, controls, is controlled by or is under common control with Purchaser. For purposes of this definition, "control" means possessing the power to direct or cause the direction of the management of the entity, whether through the ownership of voting securities of the entity, by contract or otherwise.

11. Repurchase Option. In the event Purchaser fails to Commence Construction (as defined below) on the Property on or within three hundred sixty-five (365) days from the date of conveyance (the "**Commencement of Construction Deadline**"), subject to extension for force Majeure Events as defined below, then upon Purchaser's failure to Commence Construction by the Commencement of Construction Deadline, Seller, at its sole option, may repurchase the Property from Purchaser for a sum equal to Purchase Price paid by Purchaser for the Property (the "**Repurchase Option**"). The Commencement of Construction Deadline shall be automatically extended day-for-day for any delays caused by Force Majeure Events. "Force Majeure Events" means any acts of God, war, civil unrest, terrorism, strikes, labor disputes, material or labor shortages, pandemics, epidemics, floods, fires, unusually severe weather conditions, or other causes beyond the reasonable control of Purchaser that materially affect Purchaser's ability to Commence Construction. Seller shall have until twelve (12) months following the Commencement of Construction Deadline to exercise its Repurchase Option requiring Purchaser, its successors or assigns, to convey the Property back to Seller by statutory warranty deed ("**Repurchase Option Period**"); provided, however, the Repurchase Option Period shall automatically expire and the Repurchase Option shall automatically terminate at such time Purchaser Commences Construction. Seller shall exercise the Repurchase Option, if at all, by delivery of written notice thereof to Purchaser (the "**Repurchase Notice**"). Seller's failure to exercise its Repurchase Option within the Repurchase Option Period shall be deemed a waiver of Seller's Repurchase Option. In the event that Seller exercises the Repurchase Option, the

consummation of the re-conveyance of the Property from Purchaser back to Seller shall occur within sixty (60) days after Seller's delivery of the Repurchase Notice to Purchaser. "Commence(s) Construction" shall mean all necessary permits and approvals have been obtained, foundations and footings have been poured, and actual physical construction on the Property has begun. This language shall be contained in the Deed and shall survive Closing.

12. Survival of Closing. All warranties, covenants and representations made herein by either Seller or Purchaser shall survive Closing for a period of twelve (12) months after the Closing Date.

13. Seller's Representations, Warranties and Covenants.

(a) Seller represents, warrants and covenants to Purchaser that:

(i) Seller is a municipal corporation duly formed and in existence and in good standing in accordance with the laws of the State of Alabama and is authorized and qualified to own the Property and do business in the State. Further, Seller (x) has complete and full authority to execute this Agreement and to convey to Purchaser good and marketable fee simple title to the Property, in accordance with Paragraph 8 of this Agreement, which to Seller's knowledge is free and clear of all liens, encumbrances and other exceptions that may have been caused by Seller to title except for (aa) ad valorem taxes not yet due and payable, (bb) easements for the installation or maintenance of public utilities servicing the Property, (cc) easements, restrictions, setback lines, or restrictive covenants, of record that do not materially affect Purchaser's intended use of the Property for the Project, (y) will execute and deliver such other documents, instruments, agreements, including (but not limited to) affidavits and certificates, as are necessary to effectuate the transaction contemplated herein, and (z) will take all such additional action necessary or appropriate to effect and facilitate the consummation of the sale and purchase transaction contemplated herein. Each of the persons executing this Agreement on behalf of Seller further represents and warrants that the persons signing this Agreement on behalf of Seller are duly qualified and appointed representatives of Seller and have all requisite power and authority on behalf of Seller to enter into this Agreement as the valid, binding and enforceable obligation of Seller.

(ii) All assessments that are liens against the Property are shown in the official records of the taxing authorities in whose jurisdiction the Property is located; no improvements (site or area) have been constructed or installed by any public authority, the cost of which may be assessed in whole or in part against any part of the Property in the future other than for customary tap or connection fees; and Seller has not been notified of (and has no knowledge of) any possible future improvements that might create an assessment against any part of the Property.

(iii) Seller has not received any written notice of, and has no actual knowledge of, any pending or threatened taking or condemnation of any portion of Seller's Land.