

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Parsons Behle & Latimer
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, Utah 84145-0898
Attn: Shawn C. Ferrin, Esq.

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RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2003 May 16 11:53 am FEE 33.00 BY SFS
RECORDED FOR FIRST AMERICAN TITLE CO

**FIRST AMENDMENT TO
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS**

THIS FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS (this "**Amendment**") dated as of May 16th, 2003, is entered into by **LINDON GATEWAY, LC**, a Utah limited liability company ("**Declarant**"), and **HOME DEPOT U.S.A.**, a Delaware corporation ("**Home Depot**", together with Declarant, the "**Consenting Owners**").

A. Esnet Properties, L.C., Declarant's predecessor-in-interest, and Home Depot previously entered into that certain Declaration of Restrictions and Grant of Easements dated December 10, 1997 and recorded December 10, 1997 in the Utah County recorder's office, as Entry No. 98219, in Book 4461, beginning at Page 169 (the "**Declaration**"), regarding that certain real property (the "**Shopping Center**") located in the City of Lindon, Utah County, State of Utah, more particularly described on Exhibit A attached hereto.

B. Pursuant to Section 19.5 of the Declaration, the Declaration may be amended by the consent of Owners owning at least 67% of the gross acreage in the Shopping Center and, together, the Consenting Owners own more than 67% of the gross acreage in the Shopping Center.

C. Declarant has entered into that certain Real Estate Purchase and Sale Agreement with Les Schwab Tire Centers of Portland, Inc., an Oregon corporation ("**Buyer**") for the sale and purchase of certain real property as more particularly described on Exhibit B attached hereto (the "**Buyer Parcel**"). The Buyer Parcel consists of Lot 2 of the Site Plan, which is included as a Parcel under the Declaration, and certain real property formerly owned by the Utah Department of Transportation ("**UDOT**"), as more particularly described on Exhibit C attached hereto (the "**SW Corner Parcel**"), which is not encumbered by the Declaration. Declarant is now the owner of the SW Corner Parcel, and the Consenting Owners desire to include the SW Corner Parcel under the Declaration.

D. Section 2.3(d) of the Declaration provides that no building on the Property may be constructed to a height of more than 22 feet, and Buyer desires that the Consenting Owners consent to a variance in height for its proposed building.

E. Section 4.2(a) of the Declaration provides that a pylon sign for the Shopping Center could be constructed on the Property either on the SW Corner Parcel or on Lot 3 of the

Site Plan that is within 50 feet of the southerly property line of said Lot 3 in the location of a perpetual easement for such purpose (the “**Pylon Sign Easement Area**”), which land is now owned by UDOT. Buyer desires that the Consenting Owners clarify the location of such pylon sign.

F. Section 5.2(a) of the Declaration provides that no part of the Property may be used for a “repair shop (including lubrication and/or service center) or a body or fender shop” and Buyer desires that the Consenting Owners provide a variance in use for Buyer’s proposed business.

G. Section 17 of the Declaration provides that an Owner must provide certain insurance with respect to its property and Buyer desires that the Consenting Owners consent to Les Schwab Warehouse Center, Inc., an Oregon corporation (“**LSW**”) guarantying payment of the insurance limits as required under the Declaration.

H. Buyer has agreed to indemnify Home Depot in connection with the disposal of storm water from the Buyer Parcel across the Home Depot Parcel, if any.

I. Declarant and Home Depot desire to modify the Declaration pursuant to the terms and conditions contained herein.

NOW, THEREFORE, Declarant and Home Depot hereby make and consent to this Amendment as follows:

1. **Inclusion of SW Corner Parcel.** The SW Corner Parcel is hereby included as a Parcel under the Declaration and shall be deemed part of Parcel 2 and part of the Shopping Center for all intents and purposes under the Declaration.

2. **Variance in Height for Buildings on Buyer Parcel.** Notwithstanding the provisions of Section 2.3(d) of the Declaration, the building on the Buyer Parcel may be 30 feet in height.

3. **Location of Pylon Sign.** Notwithstanding the provisions of Section 4.2(a), the pylon sign may only be located within the Pylon Sign Easement Area on Lot 3.

4. **Variance in Use for Buyer Parcel.** Notwithstanding the provisions of Section 5.2(a) of the Declaration, Buyer may use the Buyer Parcel for the following purposes:

The operation of a retail tire store including the sales, service, and installation of tires and related products and services including, without limitation, wheels; brakes; alignment; struts, shocks and other suspension items; and batteries.

5. **Guaranty of Insurance Limits.** Notwithstanding the provisions of Section 17 of the Declaration, the Consenting Owners hereby agree to accept the following guaranty in lieu of compliance by Buyer with Section 17.2 of the Declaration as set forth below:

On behalf of Buyer and its tenant, Les Schwab Tire Centers of Utah, Inc., LSW, by signing this Amendment, hereby guarantees payment of the minimum insurance policy limits set

forth in Section 17.1 of the Declaration to the extent that such payments are not, or cannot, be made by Buyer or its tenant through any program of self-insurance they maintain or in which they participate. So long as this guaranty is in effect, LSW shall have all the duties and obligations that an insurer providing the required insurance policies otherwise would have. This guaranty shall be deemed to satisfy the requirements of Section 17.2 of the Declaration provided that LSW maintains a minimum tangible net worth of \$100,000,000. This guaranty shall not be effective for such period or periods of time Buyer or its tenant maintains a program of self-insurance in compliance with Section 17.2 of the Declaration, otherwise provides insurance in compliance with Section 17.1 of the Declaration, or does not own any portion of the Shopping Center. This guaranty may not be modified or terminated without the prior written approval of the Consenting Owners or their successors or assigns.

6. **Storm Water Indemnity.** Notwithstanding the provisions of Section 17.4 of the Declaration, Buyer shall defend, indemnify and hold Home Depot harmless for, from and against any and all damages, liabilities, actions, claims, costs and expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal) arising in connection with damage to property from the disposal of storm water, if any, from the Buyer Parcel across the Home Depot Parcel.

7. **Definitions.** Any capitalized terms used and not defined herein shall have the meaning given them in the Declaration.

8. **Full Force and Effect.** The Declaration as amended shall remain in full force and effect. To the extent the terms of this Amendment conflict with the terms of the Declaration, the terms of this Amendment shall control.

9. **Counterparts.** This Amendment may be executed in counterparts and delivered by facsimile.

[Signatures Begin on Following Page]

IN WITNESS WHEREOF, Declarant and Home Depot have executed this Amendment as of the date first above written.

DECLARANT:

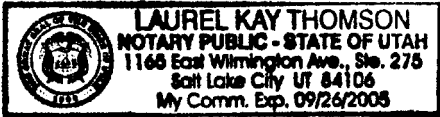
LINDON GATEWAY, LC, a Utah limited liability company

By: JT Lindon Gateway, L.C., a Utah limited liability company, its authorized Member

By: [Signature]
John R. Thackeray, its Manager

STATE OF Utah)
COUNTY OF Salt Lake : ss.

The foregoing instrument was acknowledged before me this May 6, 2003, by John R. Thackeray, as Manager of JT Lindon Gateway, L.C., as authorized Member of Lindon Gateway, LC.



[Signature]
NOTARY PUBLIC
Residing at: Salt Lake County

My Commission Expires:
9-26-2005

HOME DEPOT:

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

By: [Signature]

Name: Daniel R. Hatch

Its: Senior Corporate Counsel-R.E.

SCF

STATE OF CALIFORNIA)
 : ss.
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this May 7, 2003, by Daniel R. Hatch, Senior Corporate Counsel of Home Depot U.S.A., Inc.

[Signature]
NOTARY PUBLIC
Residing at: Orange, California

My Commission Expires:
APRIL 30, 2006



HOME DEPOT:

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

By: _____
Name: _____
Its: _____

SCF

JLN

STATE OF _____)
 : ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this May __, 2003, by _____, as _____ of Home Depot U.S.A., Inc.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

The undersigned hereby acknowledges and agrees to be bound by the provisions of Section 5 of this Amendment:

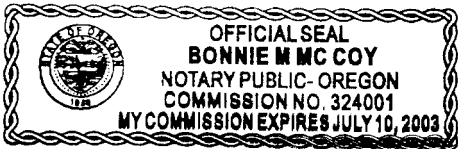
LSW:

LES SCHWAB WAREHOUSE CENTER, INC., an Oregon corporation

By: [Signature]
Richard B. Borgman,
Sr. Executive Vice President

STATE OF OREGON)
 : ss.
COUNTY OF CROOK)

The foregoing instrument was acknowledged before me this May 15, 2003, by Richard B. Borgman, as Senior Executive Vice President of Les Schwab Warehouse Center, Inc.




[Signature]
NOTARY PUBLIC
Residing at: Prineville

My Commission Expires:
7/10/03

The undersigned hereby acknowledges and agrees to be bound by the provisions of Section 6 of this Amendment:

BUYER:

LES SCHWAB TIRE CENTERS OF PORTLAND, INC., an Oregon corporation

By: 
Richard B. Borgman,
Sr. Executive Vice President

STATE OF OREGON)
): ss.
COUNTY OF CROOK)

The foregoing instrument was acknowledged before me this May 15, 2003, by Richard B. Borgman, as Senior Executive Vice President of Les Schwab Tire Centers of Portland, Inc.



Bonnie M. McCoy
NOTARY PUBLIC
Residing at: Prineville

My Commission Expires:

7/10/03

EXHIBIT A

LEGAL DESCRIPTION OF SHOPPING CENTER

Beginning at the Southwest Corner of Lot 5, Plat "B", LINDON PARK STATION Subdivision; thence S89°58'41"E 100.03 feet; thence S4°20'28"E 8.61 feet; thence N89°38'41"E 94.95 feet, the previous 3 (three) courses along said Plat; thence Southeasterly along the arc of a 305.00 foot radius non-tangent (radius bears: S65°48'28"W) curve concave southwesterly, 94.76 feet through a central angle of 17°48'06" (chord: S15°17'29"E 94.38 feet) to a point of compound curvature; thence Southwesterly along the arc of a 44.00 foot radius curve to the right 73.87 feet through a central angle of 96°11'43" (chord: S41°42'24"W 65.50 feet) thence S89°48'14"W along the north line of 600 South Street, 100.85 feet; thence N62°12'24"W 140.93 feet; thence N30°27'40"E 95.83 feet to the point of beginning.

EXHIBIT B

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LEGAL DESCRIPTION OF BUYER PARCEL

All of Lot 6, Plat C, LINDON PARK STATION SUBDIVISION, according to the official plat thereof as recorded in the office of the Utah County Recorder; And

All of Lot 7, Plat C, LINDON PARK STATION SUBDIVISION, according to the official plat thereof as recorded in the office of the Utah County Recorder.

EXHIBIT C

LEGAL DESCRIPTION OF SW CORNER PARCEL

PT Lot 7, PLAT C, LINDON PARK STATION SUB ALSO DESCRIBED AS; COM S 2456.39 FT & E 1507.74 FT FR NW COR SEC. 4, T6S, R2E, SLB & M; S 89 DEG 38 ' 41" W 91.08 FT ACTUAL COURSE= S 89 deg 38' 48" W 91.08; ALONG THE CURVE TO THE R (CHORD BEARS: S 10 DEG 11' 21" E 114.72 FT, RADIUS = 395 FT) ARC LENGTH = 115.12 FT; S 1 DEG 50' 22" E 28.93 FT ACTUAL COURSE = S 01 Deg 50' 24" E 28.93; ALONG THE CURVE TO L (CHORD BEARS: S 71 DEG 22' 11" E 19.36 FT, RADIUS = 30 FT) ARC LENGTH = 19.71 FT; N 89 DEG 48' 14" E 23.1 FT ACTUAL COURSE = N 89 deg 48' 13" E 23.1; ALONG THE CURVE TO R (CHORD BEARS: S 87 DEG 28' 30" E 28.43 FT, RADIUS = 300 FT) ARC LENGTH = 28.44 FT; N 149.74 FT ACTUAL COURSE= N 00 deg 00' 00" W 149.74 TO BEG.