

When Recorded Return To:

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Salt Lake City, Utah 84145-0898

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PATSY CUTLER - IRON COUNTY RECORDER  
2004 APR 22 16:36 PM FEE \$33.00 BY DBJ  
REQUEST: SD UTAH TITLE CO/CEDAR CITY

Space above for County Recorder's Use

**FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE PROVIDENCE CENTER**

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE PROVIDENCE CENTER (the "Amendment") is made as of April 21<sup>st</sup>, 2004 by PROVIDENCE QUANTUM PARTNERS, L.C., a Utah limited liability company ("Declarant"), with reference to the following:

A. On or about April 21, 2000, Declarant entered into that certain DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE PROVIDENCE CENTER (the "Declaration") affecting the Property located in Iron County, Utah. The Declaration was recorded on April 24, 2000 as Entry No. 420607 in Book 712 beginning at Page 179 in the Iron County Recorder's Office ("Official Records"). The Property is more particularly described on the attached Exhibit A.

B. Home Depot U.S.A., Inc., a Delaware corporation, has the right to purchase from Declarant a portion of the Property (hereinafter the "Home Depot Property"), which property is more particularly shown on the site plan ("Site Plan") attached hereto as Exhibit B and more particularly described on Exhibit C.

C. Pursuant to Section 14.3 of the Declaration, Declarant desires to amend the Declaration on terms and conditions set forth below.

NOW THEREFORE, the Declaration is amended as follows:

1. Recitals. The recitals set forth above and the exhibits attached to this Amendment are each incorporated into the body of this Amendment as if set forth in full herein.
2. Amendment to Declaration. This Amendment amends the Declaration. In the event of any conflict or inconsistency between the terms of this Amendment and the terms of the Declaration, the terms of this Amendment shall control.
3. Definitions. Unless defined herein, capitalized terms shall have the meaning assigned in the Declaration.

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4. **Landscaping.** Notwithstanding the provisions of Section 4.3 of the Declaration, the landscaping requirements for the Home Depot Property shall be that at least ten percent (10%) of the surface area of the Home Depot Property be landscaped.

5. **Uses Specifically Prohibited.** The restrictions set forth in subsections (j) and (k) of Section 7.2 of the Declaration shall not preclude the operation of a home improvement store on the Home Depot Property by the Owner of the Home Depot Property.

6. **Apportionment.** Notwithstanding the calculation provisions of Section 8.2 of the Declaration, the Owner's Percentage for the Owner of the Home Depot Property shall be nineteen and one-half percent (19.5%), which percentage shall be adjusted in the event that additional land is added to the Property pursuant to Article 13 of the Declaration.

7. **Exterior Lighting.** Notwithstanding the provisions of Section 3.3 of Exhibit B of the Declaration, the Owner of the Home Depot Property shall only be required to install the exterior lighting contemplated by Section 3.3 of Exhibit B of the Declaration along Providence Center Drive and the northern access way (as shown on the Site Plan).

8. **Building Size.** The building size restriction set forth in Section 3.7 of Exhibit B of the Declaration shall not apply to the Home Depot Property.

9. **Parking.** Notwithstanding the provisions of Section 3.8 of Exhibit B of the Declaration, the Owner of the Home Depot Property shall construct and maintain on the Home Depot Property five (5) parking spaces for every one thousand (1,000) square feet of Building Footage (exclusive of its garden center and outdoor sales area) on the Home Depot Property.

10. **Out Parcel Development.** The real property legally described on Exhibit D attached hereto and identified on the Site Plan as Out Parcels 2 and 3 shall individually be referred to as an "Out Parcel" or collectively referred to as "Out Parcels."

(a) No Building on the Out Parcels (including any landscaping located thereon) shall exceed one (1) story and twenty-five (25) feet in height, inclusive of all architectural embellishments, mechanical fixtures, signage and television equipment, and screening for same.

(b) If a business use on an Out Parcel contains a drive-up or drive-thru unit, then the Owner of the Out Parcel shall create sufficient space for automobile stacking so that access to and from the Property (or any part thereof) to or from any public right-of-way shall not be unreasonably interfered with, obstructed or delayed.

11. **No Build Easement.** No Building or other structure shall be constructed within forty (40) feet of the Building located on the Home Depot Property. The forty (40) feet is measured from the outside of any projections including, but not limited to, cornices, canopies etc. that may exist on the Building located on the Home Depot Property and any adjoining Building. Any exterior wall of a Building that faces and is within sixty (60) feet of the Building on the Home Depot Property shall have a minimum fire resistance rating of three (3) hours. Any openings in an exterior wall of a Building that faces and is within sixty (60) feet of the Building on the Home Depot Property shall have opening protectives with a fire resistance rating of three

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(3) hours. Nothing in this Section 11, shall prohibit the Owner of the Home Depot Property from relocating, replacing, altering or expanding all or any portion of the Building on the Home Depot Property. The west wall on the Building of the Home Depot Property shall have a minimum fire resistance rating of three (3) hours. Any openings on the west wall of the Building on the Home Depot Property shall have opening protectives with a fire resistance rating of three (3) hours.

12. Consents. Any modification of the Declaration, as amended by this Amendment, that amends, alters or modifies the terms, conditions and restrictions of this Amendment shall require the written consent of the Owner of the Home Depot Property.

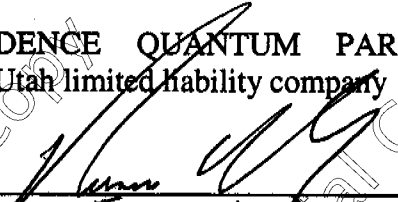
13. Continuation. Except as set forth herein, all of the terms and conditions contained in the Declaration shall remain the same and in full force and effect.

14. Effective Date. This Amendment shall become effective upon recordation in the Official Records in the office of the County Recorder of Iron County, state of Utah. (the "Effective Date").

IN WITNESS WHEREOF, the Declarant has executed this Amendment as of the day and year first written above.

DECLARANT:

PROVIDENCE QUANTUM PARTNERS,  
L.C., a Utah limited liability company

By:   
Print Name: THOMAS A. PUGH  
Title: MANAGING MEMBER

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STATE OF UTAH )

COUNTY OF Texas )

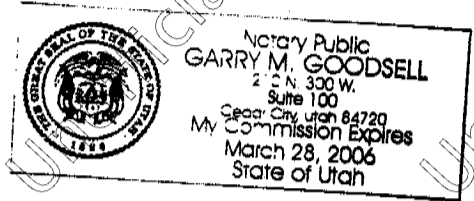
ss.

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of APRIL, 2004 by THOMAS A. PUGH, the MANAGING MEMBER of Providence Quantum Partners, L.C., a Utah limited liability company.

Garry M. Goodsell  
NOTARY PUBLIC  
Residing at: CLERMONT UT

My Commission Expires:

3/28/2006



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**EXHIBIT A**

**(Legal Description of the Property)**

**[See Attached.]**

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# EXHIBIT A

## PROVIDENCE CENTER OVERALL PROPERTY

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 21, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SLM; THENCE S89°51'05"W, 150.02 FEET ALONG THE SECTION LINE; THENCE N01°09'20"W, 403.91 FEET; THENCE N90°00'00"W, 362.90 FEET; THENCE N02°37'28"W, 1375.45 FEET; THENCE S65°56'25"E, 168.00 FEET; THENCE N22°19'39"E, 40.95 FEET; THENCE N24°06'44"E, 74.00 FEET; THENCE S68°20'15"E, 727.15 FEET; THENCE N21°39'45"E, 472.81 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 15.00 FEET, A DISTANCE OF 23.56 FEET; THENCE S68°20'15"E, 89.67 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 56.00 FEET, A DISTANCE OF 26.94 FEET; THENCE N84°13'12"E, 115.33 FEET TO A POINT ON THE WESTERLY R/W LINE OF PROVIDENCE CENTER DRIVE; THENCE ALONG SAID R/W LINE S05°54'04"E, 133.51 FEET; THENCE ALONG SAID R/W LINE & THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 825.00 FEET, A DISTANCE OF 410.57 FEET; THENCE ALONG SAID R/W LINE S22°36'45"W, 473.15 FEET; THENCE ALONG SAID R/W LINE AND THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 1155.00 FEET, A DISTANCE OF 132.84 FEET; THENCE S29°12'09"W, 80.03 FEET; THENCE LEAVING SAID R/W LINE N89°46'50"W, 401.49 FEET; THENCE S01°09'20"E, 809.43 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.

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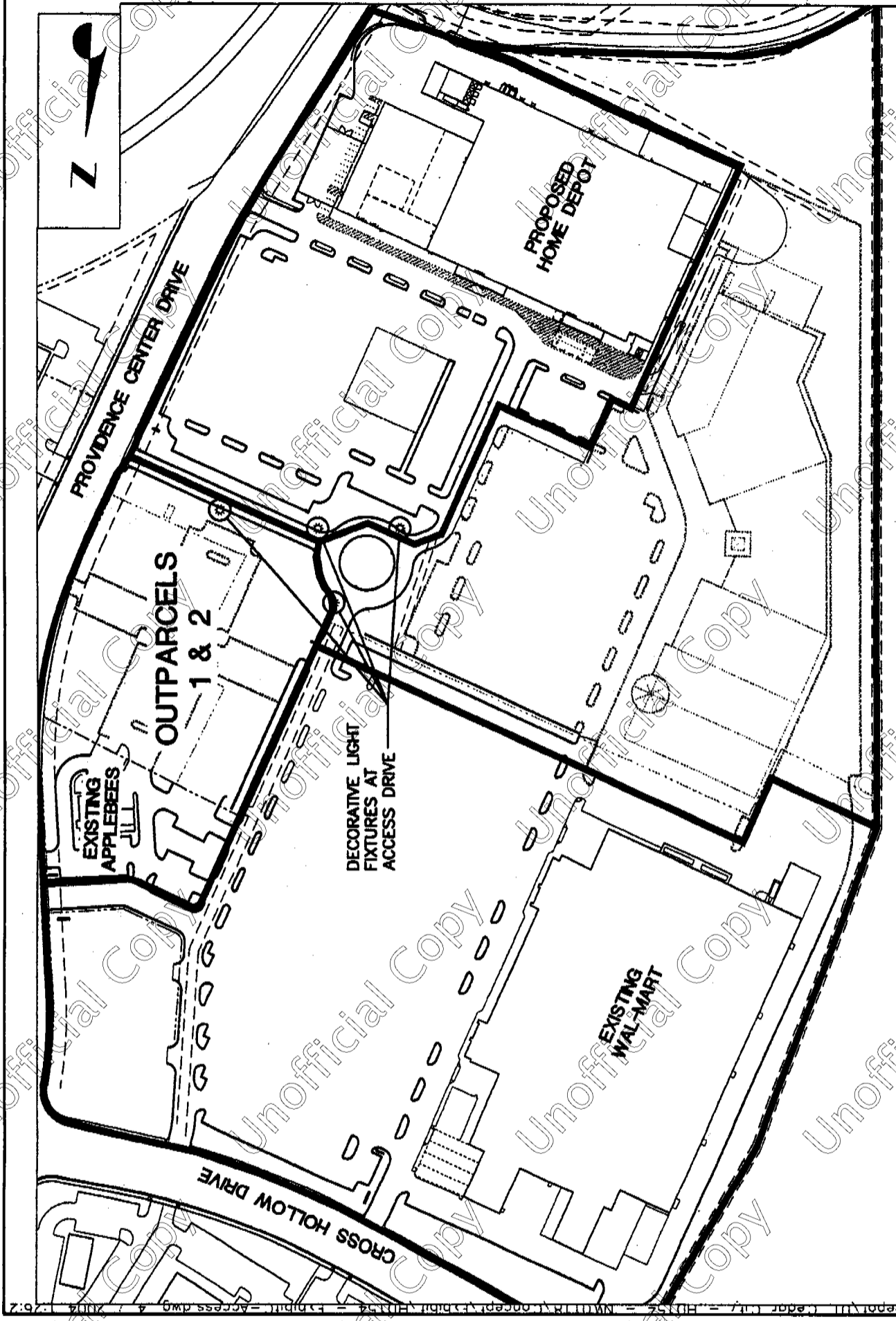
**EXHIBIT B**

**(Site Plan)**

**[See Attached.]**

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**DECLARATION EXHIBIT B AMENDMENT**

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NOTE: THE BOUNDARIES OF THIS DRAWING WERE DEVELOPED FROM SCALED INFORMATION AND SHOULD NOT BE CONSTRUED AS ACCURATE.

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**EXHIBIT C**

**(Legal Description of the Home Depot Property)**

The land referred to in this instrument is situated in Iron County, Utah and is described as follows:

BEGINNING AT A POINT LOCATED N01°09'20"W ALONG THE SECTION LINE 805.29 FEET AND N90°00'00"W 309.09 FEET FROM THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST OF THE SALT LAKE BASE MERIDIAN; RUNNING THENCE N21°39'45"E 415.63 FEET; THENCE S68°20'15"E 33.00 FEET; THENCE N21°39'45"E 82.68 FEET; THENCE S68°20'15"E 158.83 FEET; THENCE N21°39'45"E 220.00 FEET; THENCE N66°39'45"E 45.01 FEET; THENCE S68°20'15"E 80.00 FEET; THENCE N66°40'06"E 81.33 FEET; THENCE S68°20'15"E 324.00 FEET TO A POINT LOCATED ON THE WEST RIGHT-OF-WAY LINE OF PROVIDENCE CENTER DRIVE; THENCE S22°36'45"W ALONG SAID RIGHT-OF-WAY 331.25 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 1155.00 FEET AND A CENTRAL ANGLE OF 06°35'24". THENCE SOUTHWESTERLY ALONG SAID CURVE AND ALONG SAID RIGHT-OF-WAY 132.84 FEET TO THE P.T.; THENCE S29°12'09"W 327.07 FEET; THENCE DEPARTING SAID LINE AND RUNNING N73°13'09"W 232.51 FEET; THENCE N68°20'15"W 395.27 FEET TO THE POINT OF BEGINNING. CONTAINING 10.68 ACRES.

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EXHIBIT D

(Legal Description of the Out Parcels)

The land referred to in this instrument is situated in Iron County, Utah and is described as follows:

BEGINNING AT A POINT LOCATED N01°09'20"W ALONG THE SECTION LINE 1576.20 FEET AND N90°00'00"E 543.51 FEET FROM THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST OF THE SALT LAKE BASE MERIDIAN, RUNNING THENCE S68°20'15"E 191.87 FEET TO A POINT LOCATED ON THE WEST RIGHT-OF-WAY LINE OF PROVIDENCE CENTER DRIVE SAID POINT ALSO BEING ON A NON-TANGENT CURVE TO RIGHT HAVING A RADIUS OF 825.00 FEET AND A CENTRAL ANGLE OF 05°16'03". RADIUS POINT BEARS N72°39'18"W; THENCE SOUTHWESTERLY ALONG SAID CURVE AND ALONG SAID RIGHT-OF-WAY LINE 75.85 FEET TO THE P.T.; THENCE S22°36'45"W 141.91 FEET; THENCE DEPARTING SAID LINE AND RUNNING N68°20'15"W 191.75 FEET; THENCE N21°39'45"E 217.67 FEET TO THE POINT OF BEGINNING.

BEGINNING AT A POINT LOCATED N01°09'20"W ALONG THE SECTION LINE 1576.20 FEET AND N90°00'00"E 543.51 FEET FROM THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST OF THE SALT LAKE BASE MERIDIAN, RUNNING THENCE S21°39'45"W 217.67 FEET; THENCE N68°20'15"W 132.25 FEET; THENCE N25°47'08"W 110.49 FEET; THENCE N21°39'45"E 33.65 FEET; THENCE S68°20'15"E 19.50 FEET; THENCE N21°39'45"E 109.30 FEET; THENCE S68°20'15"E 194.15 FEET TO THE POINT OF BEGINNING.

BEGINNING AT A POINT LOCATED N01°09'20"W ALONG THE SECTION LINE 1576.20 FEET AND N90°00'00"E 543.51 FEET FROM THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST OF THE SALT LAKE BASE MERIDIAN, RUNNING THENCE N68°20'15"W 194.15 FEET; THENCE N21°39'45"E 221.34 FEET; THENCE S65°53'16"E 194.33 FEET; THENCE S21°39'45"W 213.03 FEET TO THE POINT OF BEGINNING.

BEGINNING AT A POINT LOCATED N01°09'20"W ALONG THE SECTION LINE 1576.20 FEET AND N90°00'00"E 543.51 FEET FROM THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST OF THE SALT LAKE BASE MERIDIAN. RUNNING THENCE N21°39'45"E 213.03 FEET; THENCE S65°53'16"E 149.35 FEET TO A POINT LOCATED ON THE WEST RIGHT-OF-WAY LINE OF PROVIDENCE CENTER DRIVE. SAID POINT ALSO BEING ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 825.00 FEET AND A CENTRAL ANGLE OF 14°41'40". RADIUS POINT BEARS N87°20'58"W; THENCE SOUTHWESTERLY ALONG SAID CURVE AND ALONG SAID RIGHT-OF-WAY LINE 211.58 FEET; THENCE DEPARTING SAID LINE AND RUNNING N68°20'15"W 191.87 FEET TO THE POINT OF BEGINNING.

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