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7/31/2007 4:40:00 PM \$34.00  
Book - 9498 Pg - 1916-1926  
Gary W. Ott  
Recorder, Salt Lake County, UT  
FIRST AMERICAN TITLE  
BY: eCASH, DEPUTY - EF 11 P.

**WHEN RECORDED RETURN TO:**

White City Water Improvement District  
999 East Galena Drive  
Sandy, Utah 84094  
Attention: Paul H. Ashton

**FIRST AMERICAN TITLE**

Space above for County Recorder's Use

AW# 201420

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**EASEMENT AGREEMENT**

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31 THIS EASEMENT AGREEMENT (the "Easement Agreement") is made effective this day of November, 2006, by and between HOME DEPOT U.S.A., INC., a Delaware corporation ("Home Depot"), and MAGNA INVESTMENT AND DEVELOPMENT, LTD., a Utah limited partnership ("Magna") (Home Depot and Magna are collectively referred to herein as the "Grantors"), and WHITE CITY WATER IMPROVEMENT DISTRICT, a political subdivision of the State of Utah ("Grantee") (Grantors and Grantee are sometimes referred to herein collectively as the "Parties" and individually as a "Party"), with reference to the following:

A. Magna is the owner of certain real property located in the City of Sandy, County of Salt Lake, State of Utah ("Magna Property"). Home Depot is the owner of certain real property immediately adjacent to the Magna Property ("Home Depot Property").

B. Grantee is the owner of certain real property immediately adjacent to the Magna Property and the Home Depot Property ("Grantee Property"), more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference. Grantee maintains and operates a drinking water well and related facilities on the Grantee Property.

C. In accordance with and subject to the terms and conditions of this Easement Agreement, Grantors agree to grant to Grantee an easement for the purpose of allowing Grantee to enter upon portions of the Magna Property and the Home Depot Property for the purpose of accessing the Grantee Property to perform maintenance of the water wellhead located on the Grantee Property.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and consideration of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. Subject to the terms and conditions of this Easement Agreement, Grantors hereby grant to Grantee, its successors and assigns, a perpetual, non-exclusive easement ("Easement") on, over, and across the portion of the Home Depot Property and the Magna Property described on Exhibit "B" attached hereto and incorporated herein by this

reference ("Easement Area") for the sole purpose of performing periodic repairs to and replacement of the water wellhead located on the Grantee Parcel and for no other purpose. Grantors hereby grant to Grantee the non-exclusive right and license to use the "Service Drive" as currently depicted on Exhibit "C" attached hereto and incorporated herein by this reference in order to access the Easement Area. Except for the Service Drive, Grantee shall not enter upon any portion of the Home Depot Property without the prior written consent of Home Depot or the Magna Property without the prior written consent of Magna.

2. Reservation of Rights. Grantors reserve and retain the right to use the Easement Area and to grant easements, rights-of-way, and other use rights to other persons or entities to use the Easement Area, provided such use does not unreasonably interfere with the rights granted to Grantee hereunder. Nothing herein shall prohibit Grantors from building or constructing, or permitting to be built or constructed curbs and gutters, service drives, sidewalks, pavement, landscaping, or other improvements ("Improvements") over and across the Easement Area and/or the Service Drive. Grantors reserve and retain the right to modify, relocate and/or improve the Service Drive from time to time.

3. Restoration of Easement Area. Grantee shall, at Grantee's sole cost and expense, promptly replace, repair, and return to its prior condition the Easement Area, the Service Drive, and any damaged or disturbed Improvements to that same condition which existed prior to any entry by Grantee.

4. Non-Interference. Grantee acknowledges and agrees that Home Depot operates a home improvement store and garden center on the Home Depot Property and that Grantee shall perform any and all activities under this Easement Agreement expeditiously and shall use commercially reasonable best efforts to minimize any disruption to the operations on the Home Depot Property caused by Grantee's activities. At least thirty (30) days prior to entering upon the Easement Area, Grantee shall deliver to Home Depot for approval a detailed description of the scope of work to be performed by Grantee and the proposed duration, date and time of such work. Home Depot shall have the right to disapprove the duration, the date and/or the time of any such entry if Grantee's entry and/or activities would materially interfere with the operation of Home Depot's business. If Home Depot disapproves of the proposed entry, Home Depot and Grantee shall cooperate in good faith to designate an acceptable duration, date and time of entry. Notwithstanding the foregoing, in the event of an emergency, Grantee shall have the immediate right to enter the Easement Area so long as Grantee notifies Home Depot's on-site store manager and subsequently delivers written notice to Home Depot as soon as reasonably practicable thereafter.

5. Compliance with Law; Mechanics' Liens. Grantee shall be responsible for complying with all applicable governmental laws, statutes, rules, regulations, orders and ordinances. Grantee shall at all times keep the Easement Area free from mechanics' liens or similar liens arising on account of or resulting from any act by or on behalf of Grantee. In the event any mechanics' lien or similar lien is recorded against the Easement Area on account of any act by or on behalf of Grantee, Grantee shall immediately cause such mechanics' lien to be removed from the Easement Area.

6. Indemnity. Grantee shall indemnify, defend, and hold harmless Grantors from and against any and all losses, claims, actions, damages, liabilities, penalties, fines, or expenses of any nature whatsoever, including, without limitation, reasonable attorneys' fees and costs on account of mechanics' lien claims, injury to persons, the death of any person, or damages to property (collectively, "Claims") arising from the use by Grantee of the Easement, except to the extent any such Claims are caused by the negligence or willful misconduct of Grantors.

7. Right to Cure. In the event Grantee fails to perform any of its obligations under this Easement Agreement, and such failure continues beyond thirty (30) days after written notice of such failure from either Home Depot or Magna (or, in the case of a failure which cannot be cured within thirty (30) days, Grantee has not commenced a cure within the 30-day period or, having commenced a cure, does not diligently pursue such cure to completion), both Home Depot and Magna shall have the right, but not the obligation, to perform any such obligation of Grantee at the sole cost and expense of Grantee, and Grantee shall reimburse the performing Grantor for all costs incurred in performing such obligation, together with interest thereon at a rate equal to twelve percent (12%) per annum, within ten (10) days after demand therefor, which demand shall be accompanied by reasonable documentation evidencing such costs.

8. Covenants Run with the Land. The terms of this Easement Agreement and the Easement granted herein shall be a burden on the Easement Area, shall be appurtenant to and for the benefit of the Grantee Property, and each part thereof, and shall run with the land.

9. Duration. The duration of the Easement shall be perpetual.

10. Not a Public Dedication. Nothing contained in this Easement Agreement shall be deemed to be a gift or dedication to or for the general public or for any public purposes whatsoever, it being the intention of the Parties that this Easement Agreement be strictly limited to and for the purposes expressed herein.

11. Attorneys' Fees. In the event it becomes necessary for any Party hereto to employ an attorney in order for such Party to enforce its rights hereunder, either with or without litigation, the non-prevailing Party of such controversy shall pay to the prevailing Party reasonable attorneys' fees and, in addition, such costs and expenses as are incurred by the prevailing Party in enforcing its rights hereunder.

12. Governing Law. This Easement Agreement shall be governed by and construed in accordance with and interpreted under the laws of the State of Utah.

13. Severability. If any term or provision of this Easement Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Easement Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, condition, and provision of this Easement Agreement shall be valid and enforced to the fullest extent permitted by law.

14. Binding Effect. This Easement Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their heirs, personal representatives, successors, and assigns. All provisions of this Easement Agreement, including the benefits and burdens, run

with the land and are binding upon and inure to the benefit of the respective assigns and successors of the Parties.

15. Notice. All notices required to be given under this Easement Agreement shall be in writing and shall be transmitted either by personal delivery, a reputable overnight courier which keeps receipts of delivery (such as Federal Express), or through the facilities of the United States Post Office, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be effective upon delivery, if delivered by personal delivery or overnight courier, and seventy-two (72) hours after dispatch, if mailed in accordance with the above. Notices to the respective Parties shall be sent to the addresses below:

If to Home Depot: Home Depot U.S.A., Inc.  
3800 West Chapman Avenue  
Orange, California 92868  
Attention: Real Estate Department and Legal  
Department  
Store No. 4421

And to: Home Depot U.S.A., Inc.  
370 Corporate Drive North  
Tukwila, WA 98188  
Attention: Senior Real Estate Manager  
Store No. 4421

If to Magna: Magna Investment and Development, Ltd.  
36 East 3750 South  
Salt Lake City, Utah 84115  
Attention: Steven Marshall

If to Grantee: White City Water Improvement District  
999 East Galena Drive  
Sandy, Utah 84094  
Attention: Paul H. Ashton

16. No Relationship. The Parties shall not, by this Easement Agreement nor by any act of either Party, be deemed principal and agent, limited or general partners, joint venturers, or to have any other similar relationship to each other in the conduct of their respective businesses, or otherwise.

17. No Waiver. Failure of a Party to insist upon strict performance of any provisions of this Easement Agreement shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this Easement Agreement shall be waived unless such waiver is in writing and signed by the Party alleged to have waived its rights.

18. Authority. Each undersigned represents and warrants that each has been duly authorized by all necessary corporate, company or trust action, as appropriate, to execute this Easement Agreement for and on behalf of the respective Parties. The Parties specifically

represent and warrant that no other parties are required to join or execute this Easement Agreement to validate this Easement Agreement and the licenses, covenants, restrictions, and undertaking of this Easement Agreement. Each undersigned further represents and warrants that this Easement Agreement, when fully executed, shall constitute a legal, valid, and binding agreement for each of the respective Parties, enforceable in accordance with its terms.

19. Interpretation. The paragraph headings in this Easement Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation and construction. The use of the singular in this Easement Agreement shall include the plural, where the context is otherwise appropriate.

20. Counterparts. This Easement Agreement may be executed in any number of counterparts, each of which, when executed and delivered, by facsimile or otherwise, shall be deemed an original, but all of which shall together constitute one and the same instrument.


21. Entire Agreement; Amendment. This Easement Agreement sets forth the entire understanding of the Parties as to the matters set forth herein and cannot be altered or otherwise amended, except pursuant to an instrument in writing signed by each of the Parties hereto.

**[INTENTIONALLY BLANK – SIGNATURES TO FOLLOW]**

IN WITNESS WHEREOF, the parties have executed this Easement Agreement as of the dates below written to be effective as of the date first above written.

**GRANTORS:**

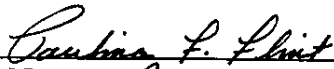
**HOME DEPOT U.S.A., INC.**, a Delaware corporation

By:   
Print Name: Ann K. Jefferson  
Its: Director - Legal  
Date: 1/31/07


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**GRANTEE:**

**WHITE CITY WATER IMPROVEMENT DISTRICT**, a special district created under Title 17A of the Utah Code

By:   
Print Name: Paulina F. Flint  
Its: Chair Board of trustees  
Date: 11-1-2006

**MAGNA INVESTMENT AND DEVELOPMENT, LTD.**, a Utah limited partnership

By:   
Print Name: THALIA P. SMART  
Its: EXECUTIVE VICE PRESIDENT  
Date: 1/22/07

STATE OF California )  
: SS.  
COUNTY OF Orange )

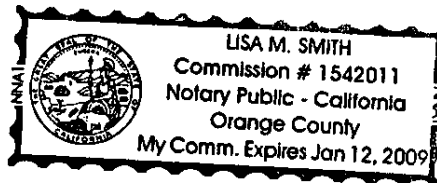
The foregoing instrument was acknowledged before me this 31 day of November, 2006, by Ann K. Terhoff, the Director-Legal of HOME DEPOT U.S.A., INC., a Delaware corporation.

Jan. 2007

Lisa M. Smith  
NOTARY PUBLIC  
Residing at: Placentia, Ca

My commission expires:

1-12-09



STATE OF Utah )  
: SS.  
COUNTY OF Salt Lake )

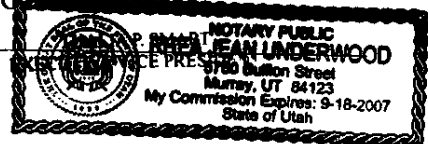
The foregoing instrument was acknowledged before me this 22 day of November, 2006, by Thalia P. Smart, the Exec. V. P. of MAGNA INVESTMENT AND DEVELOPMENT, LTD., a Utah limited partnership.

January

Sharon Jean Underwood  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My commission expires:

9/8/07



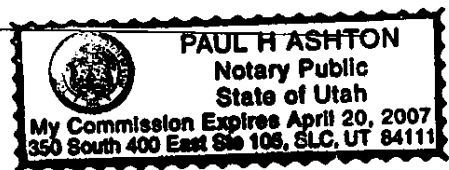
STATE OF UTAH )  
: SS.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of November, 2006, by Paulina F. Flint, the Chair of WHITE CITY WATER IMPROVEMENT DISTRICT, a special district created under Title 17A of the Utah Code.

Paul H. Ashton  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My commission expires:

\_\_\_\_\_



**EXHIBIT "A"**  
**TO**  
**EASEMENT AGREEMENT**

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LEGAL DESCRIPTION OF GRANTEE PROPERTY

The real property referenced in the foregoing instrument as the "Grantee Property" is located in the City of Sandy, County of Salt Lake, State of Utah and is more particularly described as:

BEGINNING at the Southeast corner of Lot 214, Ski Haven Estates #2; and running thence North 89°58'18" East 70.00 feet along the proposed road right-of-way; thence North 00°00'22" East 70.00 feet; thence South 89°58'18" West 70.00 feet to the East lot line of said Lot 214; thence South 00°00'22" West 70.00 feet to the POINT OF BEGINNING.

Contains approximately 0.11 acres.

*Tax Parcel 28-09-226-012*

*YWO*



**EXHIBIT "B"**  
**TO**  
**EASEMENT AGREEMENT**

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LEGAL DESCRIPTION OF EASEMENT AREA

The real property referenced in the foregoing instrument as the "Easement Area" is located in the Northeast Quarter of Section 9, Township 3 South, Range 1 East, Salt Lake Base and Meridian and in the City of Sandy, County of Salt Lake, State of Utah and is more particularly described as:

BEGINNING at the Northwest corner of Lot 2 in the Little Cottonwood Center Subdivision, which is 656.73 feet South 00°08'12" West along the Section line and 1278.06 feet West from the Northeast corner of said Section 9 and running thence North 89°57'50" East 80.35 feet along the North line of said Lot 2; thence South 113.91 feet; thence South 89°58'18" West 61.99 feet; thence North 00°00'22" East 70.00 feet to a point of curvature with a 17.50 foot radius curve to the left; thence Northwesterly 9.16 feet along the arc of said curve through a central angle of 30°00'22" (chord bears North 14°59'49" West 9.06 feet) to a tangent line; thence North 30°00'00" West 15.20 feet to a point of curvature with a 75.00 foot radius curve to the right; thence Northerly 23.63 feet along the arc of said curve through a central angle of 18°03'15" (chord bears North 20°58'22" West 23.54 feet) to the POINT OF BEGINNING.

Contains approximately 0.17 acres.

Part of 28-09-226-032  
28-09-226-031  
28-09-276-015  
28-09-276-017  
28-09-276-018

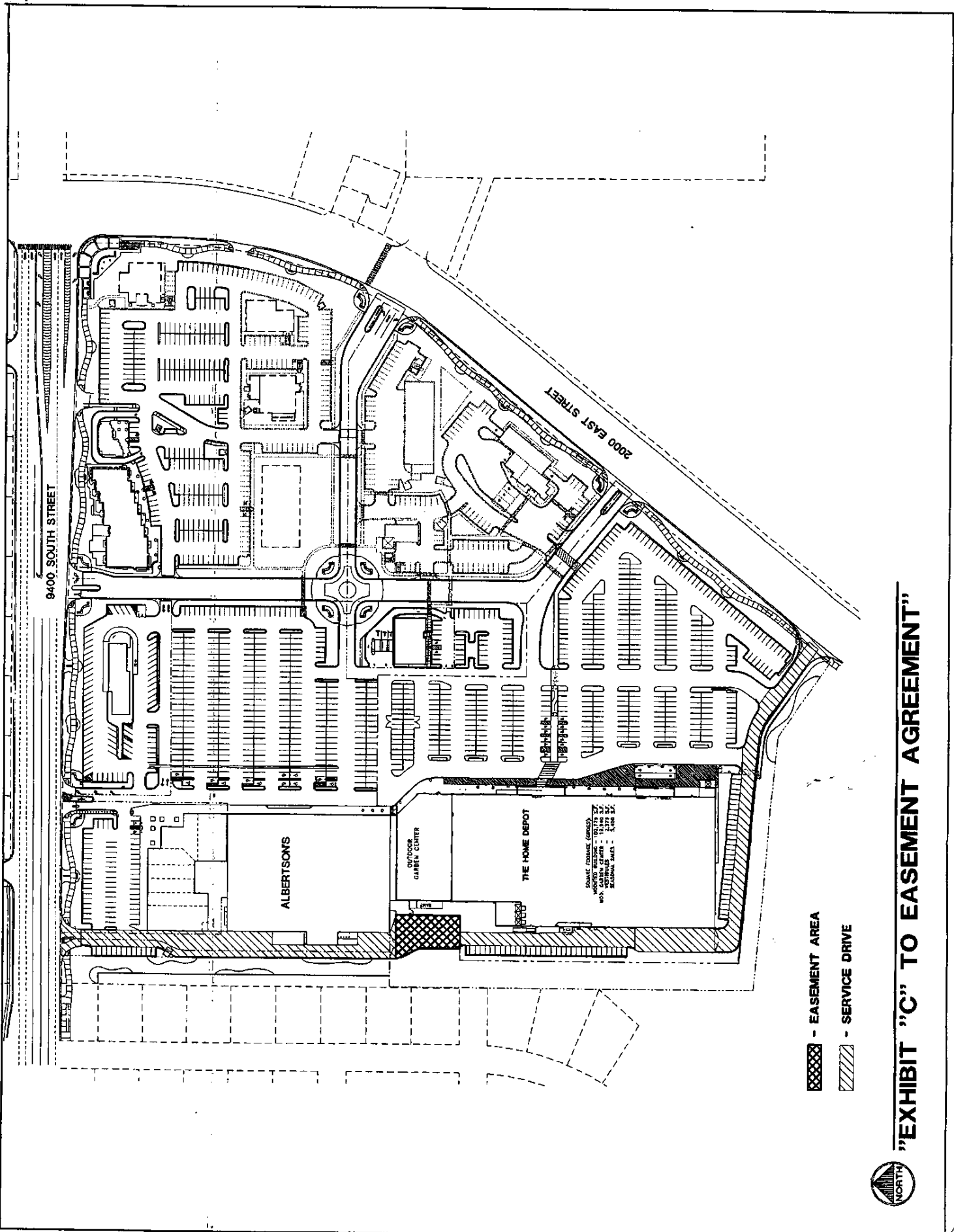
**EXHIBIT "C"  
TO  
EASEMENT AGREEMENT**

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DEPICTION OF EASEMENT AREA AND SERVICE DRIVE

*See Attached*

*70*



**"EXHIBIT 'C' TO EASEMENT AGREEMENT"**



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