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When Recorded Return To:

Richfield City  
75 East Center  
Post Office Box 250  
Richfield, Utah 84701

Space above for County Recorder's Use

Parcel I.D. No. 4-293-31  
LOT 3 HOME DEPOT COMMERCIAL S.U.A.

STORM AND SURFACE WATER DISCHARGE AGREEMENT

This STORM AND SURFACE WATER DISCHARGE AGREEMENT ("Agreement") is made and entered into as of January 19, 2007, by and between RICHFIELD CITY, a municipal corporation of the State of Utah (the "City"), and HOME DEPOT U.S.A., INC., a Delaware corporation ("Home Depot"), (the City and Home Depot are referred to herein sometimes collectively as the "Parties" and individually as a "Party"), with respect to the following:

WHEREAS, Home Depot owns (or will own) certain real property located in Sevier County, Utah (the "Home Depot Property"), which property is more particularly described as follows:

LOT 3, THE HOME DEPOT COMMERCIAL SUBDIVISION, according to the official plat thereof recorded in the office of the County Recorder of Sevier County, Utah.

WHEREAS, Home Depot desires to construct on the Home Depot Property a home improvement sales center together with related improvements (collectively, the "Improvements");

WHEREAS, said Improvements include (i) the construction of a surface water runoff detention/retention system located entirely upon the Home Depot Property (the "Storm Sewer System") as generally shown on the site plan attached hereto as Exhibit A (the "Site Plan"), and (ii) the extension of Technology Drive, as generally shown on the Site Plan, a public street to be owned and maintained by City;

WHEREAS, the City has required Home Depot to provide for the retention, detention, and control of the surface water runoff which will be generated by the Improvements upon the Home Depot Property;

WHEREAS, as part of its extension of Technology Drive, Home Depot is required to combine the normal and customary surface water runoff upon, through, and under the affected portion of Technology Drive (the "Normal Drainage") with the surface water runoff which will

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be generated by the Improvements and conduct all such waters through the Storm Sewer System; and

WHEREAS, City is willing to accept such plans provided that Home Depot grant the City an easement for discharge of the Normal Drainage through the Storm Water System or any other similar system, hereafter located entirely upon the Home Depot property;

NOW THEREFORE, in consideration of the mutual covenants set forth hereafter, the Parties agree as follows:

1. Incorporation of Recitals and Exhibits. The Recitals set forth above and the Exhibit attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full herein.

2. Effective Date. The effective date of this Agreement (the "Effective Date") shall be the date that the construction of the Storm Sewer System is completed and the Normal Drainage from Technology Drive is diverted into said system.

3. Grant of Easement. Home Depot hereby grants the City a perpetual, non-exclusive right and easement for the discharge of the Normal Drainage from the affected portion of Technology Drive (as shown on the Site Plan) onto and across the Home Depot Property, including the right to use and impound storm water within the Storm Water System. The easement granted herein shall not prohibit Home Depot, as it deems necessary or advisable, from building, constructing, improving, altering or reconfiguring the Improvements, parking and landscaping areas, walkways or other similar improvements on the Home Depot Property. Home Depot may, as it deems necessary or advisable, modify, relocate or alter the Storm Water System at any time and from time to time, provided that the discharge of the Normal Drainage from the affected portion of Technology Drive is not materially and adversely affected. The easement granted herein shall be an affirmative easement which shall run in favor of the City against all successors in title to the Home Depot Property described herein.

4. Limitation of Water Flows. City agrees not to construct, or allow the construction of, any drainage facilities or systems that will increase the Normal Drainage from the affected portion of Technology Drive into the Storm Sewer System. This paragraph shall not be construed to limit flows occurring as a result of a storm event.

5. Limitation of Hazardous Materials. City, its officials, representatives and agents shall not knowingly discard, discharge or deposit any Hazardous Materials (as defined below) into the Storm Sewer System. For purposes of this Agreement, the term "Hazardous Materials" includes, but is not limited to, (i) substances defined as hazardous or toxic substances, wastes, materials, pollutants or contaminants and any other substances which are included under or regulated by any local, state or federal law, rule or regulation, including, without limitation, "CERCLA", "RCRA", the Clean Water Act, the Toxic Substances Control Act, the Clean Air Act, the Hazardous Materials Transportation Act, the Solid Waste Disposal Act, the Safe Drinking Water Act and any other environmental laws or federal, state or local statutes or ordinances and implementing rules and regulations dealing with similar matters, (ii) any other substance or matter which results in liability to any person or entity from exposure to such



substance or matter under any statutory or common law theory, and (iii) any substance or matter which is in excess of or does not comply with any applicable standards set forth in any federal, state or local law or regulation or any requirement in any federal, state or local agency orders.

6. Entire Agreement. This 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.

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

8. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this 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 Agreement shall be valid and enforced to the fullest extent permitted by law.

9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the respective assigns and successors of the Parties.

10. No Relationship. The Parties do not, by this Agreement nor by any Parties' acts, become principal and agent, limited or general partners, joint venturers or of any other similar relationship of each other in the conduct of their respective businesses, or otherwise.

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

12. Authority. The undersigned represent and warrant that each of them has been duly authorized by all necessary corporate and governmental law, statute, regulation, or by-law, as appropriate, to execute this Agreement for and on behalf of the respective Parties. Each Party specifically represents and warrants that no other Parties are required to join or execute this Agreement to validate this Agreement and the licenses, covenants, restrictions and undertaking of this Agreement. The undersigned further represent and warrant that this Agreement, when fully executed, shall constitute a legal, valid, and binding agreement for each of the respective Parties, enforceable in accordance with its terms.

13. Interpretation. The paragraph headings in the 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 Agreement shall include the plural, where the context is otherwise appropriate.

14. Notices. All notices required to be given under this 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 following addresses (unless written notice of a change of address has been previously given pursuant hereto):

If to City: Richfield City  
75 East Center  
Post Office Box 250  
Richfield, Utah 84701  
Attention: Mayor

If to Home Depot: Home Depot U.S.A., Inc.  
2455 Paces Ferry Road  
Atlanta, Georgia 30339-4024  
Attention: Property Management  
Store No. 4422

With a copy to: Home Depot U.S.A., Inc.  
3800 West Chapman Ave.  
Orange, California 92868  
Attention: Corporate Counsel-  
Director/Real Estate Law  
Store No. 4422

15. Counterparts. This 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.

[SIGNATURE PAGE FOLLOWS]

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EXHIBIT A  
TO  
STORM AND SURFACE WATER DISCHARGE AGREEMENT

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Site Plan

[See Attached.]

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