

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**AUGUST 23, 2023**

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**UNIVERSITY OF IDAHO**

**SUBJECT**

Site lease of approximately 12 acres to The Home Depot.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section V.I.5.b.i.

**BACKGROUND/DISCUSSION**

In 1926 the Board of Regents of the University of Idaho (Regents) acquired 248 acres of undeveloped land located less than a mile northwest of campus. That land was initially utilized for grazing and crops related to the University of Idaho's (UI) agricultural programs and is the current site of a small dairy operated by UI's College of Agricultural and Life Sciences. In 1973 the Regents leased out approximately 45 acres of this property along State Highway 8 for commercial development by the owners of the Palouse Mall. The subject property for the current proposal is immediately north of the Palouse Mall, near the intersection of Farm Road and A Street, and is being proposed for development by The Home Depot for a 136,000 sq ft retail store and garden center. The site is presently used by UI for pasture and cropland. Although UI's existing dairy is located nearby, the subject property is not necessary for its continued operation.

The subject property is currently designated for commercial use on UI's Long-Range Campus Development Plan and the City of Moscow's Comprehensive Land Use Plan. The proposed development will produce a reliable income stream for UI that can be used to provide a budget source for various University programs or commitments. The site lease will generate a long-term return from the property and maintains the Regents' permanent ownership of the land, providing opportunities for continued commercial returns or re-use for future university-related activities. The proposed site lease establishes a term of 20 years with a series of eight, five-year options and a rent schedule with rent escalations over the term of the lease and options.

To make the resulting development feasible (and enhance the potential for further commercial retail development on additional property owned by the Regents), UI will provide at no cost a publicly dedicated road right-of-way for a portion of the unfinished segment of A Street that passes through UI's North Farm property. The extension of A Street through the North Farm is also anticipated on UI's Long-Range Campus Development Plan and is part of the City of Moscow's long-term transportation network planning. If the commercial development is eventually approved by the City, construction costs for the A Street extension will be paid by The Home Depot. Eventual conveyance of Regents' property for public street dedication, along with a specific legal description for the leased premises (based in part on the precise location of the future A Street Extension) will be determined

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after subsequent City of Moscow review of The Home Depot's applications for zoning, building and a determination of street improvement plans.

**IMPACT**

The Home Depot will pay all site development and operating costs attributable to their use, including the construction costs for any University capital projects anticipated by the lease and subject to the terms of agreements previously approved by the Regents. The Regents will provide the land only. The rent schedule attached to the lease provides a fixed (though escalating) payment for the duration of the lease.

**ATTACHMENTS**

Attachment 1 – Proposed site lease with diagrams

**STAFF COMMENTS AND RECOMMENDATIONS**

The staff has reviewed the proposed ground lease, exhibits, and diagrams in the provided attachments and believes there is no negative impact to the Regents' or University of Idaho's real property interests. The Regents will continue to retain permanent ownership and control of the land while any site development, construction costs, or land improvement investments remains the responsibility of The Home Depot.

This agreement also creates a new, highly dependable income stream that diversifies sources of revenue for UI and sustainably utilizes the land for a higher, better use.

Policy V.I.5.b.i governs Financial Affairs for Real and Personal Property and Services. The terms of the Ground Lease clearly fall within the subsection: Disposal of Real Property. The policy provides that leases to use real property under the control of an institution, school, or agency require prior Board approval – if the term of the lease exceeds five (5) years or if the lease revenue exceeds \$250,000.

Staff recommends approval.

**BOARD ACTION**

I move to approve the University of Idaho's Operations Officer for Finance and Administration to 1) execute the attached Ground Site Lease in substantial consistency with the draft submitted, and 2) execute related documents anticipated by that lease.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

## GROUND LEASE

THIS GROUND LEASE (this “**Lease**”) is made and entered into as of the Effective Date (as defined in Section 22.15 below) by and between **THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO**, a state educational institution and body politic and corporate organized and existing under the laws and constitution of the State of Idaho having an address of 875 Perimeter Dr., MS 3168, Moscow, Idaho 83844-3168 (“**Landlord**”), and **HOME DEPOT U.S.A., INC.**, a Delaware corporation, having an address of 2455 Paces Ferry Road, Atlanta, Georgia 30339 (“**Tenant**”).

### ARTICLE 1 - DEMISE OF PREMISES

For and in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the following terms and conditions, approximately 12.24 acres of land (the “**Land**”) lying at or near the intersection of Farm Road and W. A Street located in Moscow, Latah County, Idaho, consisting of the areas as depicted on **Exhibit “A”** attached hereto an incorporated herein, as (i) “THE HOME DEPOT” (within the area depicted as “HD PREMISES LINE” on **Exhibit “A”**) and (ii) “BASIN PREMISES” (within the area depicted as “HD BASIN PREMISES LINE” on **Exhibit “A”**) (the “**Basin Premises**”), together with all rights, easements and appurtenances pertaining thereto, including, without limitation, on a non-exclusive basis, any and all rights of ingress and egress to streets, street beds and roadways, if any, associated therewith and all improvements located thereon. Landlord and Tenant specifically acknowledge and agree that upon completion of the survey referred to in Section 18.1(b) hereof, and approval of the same by Tenant and Landlord, **Exhibit “A”** shall be amended to incorporate a legal description of the Land based on such survey. The Land, all improvements now or hereafter located thereupon and the rights, easements and appurtenances pertaining thereto are hereinafter collectively referred to as the “**Premises.**” If Tenant constructs a building on the Premises, such building is hereinafter referred to as the “**Building.**”

### ARTICLE 2 - DELIVERY OF POSSESSION

#### 2.1 Delivery of Possession; Right to Demolish and Construct.

(a) Subject to the Permitted Exceptions (as defined in Section 18.1(b)), Landlord shall tender exclusive possession of the Land to Tenant within thirty (30) days after the earlier occurrence of the following: (i) the expiration of the Final Deal Period (as defined in Section 18.4 below); or (ii) or such earlier date on which Tenant notifies Landlord that the Approvals (as defined in Section 18.3 below) and the Final Deal Approval (as defined in Section 18.4 below) has been obtained or that Tenant has waived the contingency related thereto (the date determined pursuant to this provision is hereinafter referred to as the “**Possession Date**”). Upon delivery, the Premises shall be vacant and free of any right or claim to right of possession by any entity or person other than Tenant, except for Permitted Exceptions and the water line currently existing on the Premises depicted as “Existing Water Line to be Relocated” on **Exhibit “A”**.

(b) On and after the Possession Date but subject to any governmental approvals, permits or agreements, Tenant shall have the right, at Tenant’s expense, to demolish and remove any existing improvements on the Land (other than the existing utility lines providing service outside the Premises) and to construct any and all improvements now or in the future desired by Tenant including construction of the Retail Store (as defined in Section 18.3 below). Any improvements demolished and removed by Tenant pursuant to the preceding sentence shall become the property of Tenant and Tenant may retain any amounts received with respect thereto, whether for salvage or otherwise. During the Term of this Lease, Tenant shall be the owner of any improvements constructed on the Premises by Tenant (excluding that portion of any utility lines located on the Premises that provide service to other property outside the Premises but including the drain line connecting to the Basin Premises) and shall be entitled to any and all tax benefits related thereto, including all deductions, credits and allowable depreciation. Tenant may (at Tenant’s sole cost and expense, without any reimbursement from Landlord), relocate any utility lines located on the Premises that provide service to other property outside the Premises provided that (i) Landlord provides written approval of such relocation, which approval will not be unreasonably withheld,

conditioned or delayed and (ii) Landlord and Tenant will work directly with the applicable utility company or utility concessionaire to the extent that the utility company or utility concessionaire requires that the utility company or utility concessionaire perform the relocation work and Tenant will reimburse Landlord for the costs Landlord pays to the utility company or utility concessionaire for such work (provided, however, Tenant shall not be required to reimburse Landlord for any attorneys' fees or consultant fees incurred by Landlord for such work performed by the utility company or utility concessionaire).

(c) Additionally, on or after the Possession Date, Tenant may (at Tenant's sole cost and expense and without any reimbursement from Landlord) construct the extension of A. Street as depicted on **Exhibit "A"** (including, without limitation, curb and gutter, landscaping and utilities) or otherwise approved in writing by Landlord, which approval will not be unreasonably withheld, conditioned or delayed (the "**A Street Extension**"); provided, however, such construction of the A Street Extension shall be subject to any governmental approvals, permits or agreements. Landlord and Tenant shall use commercially reasonable efforts to cooperate with each other to dedicate the property consisting of the A Street Extension to the applicable governmental authorities. To the extent the A Street Extension is owned by Landlord, Landlord hereby grants a temporary license to Tenant for Tenant to enter the A Street Extension area (and the property adjacent to the A Street Extension reasonably necessary for Tenant to construct the A Street Extension) and perform construction on the A Street Extension Area and such adjacent property to complete the A Street Extension. Such license shall terminate upon completion of the A Street Extension.

(d) Landlord hereby conveys a temporary license to Tenant for Tenant to enter the areas adjacent to the Basin Premises necessary for Tenant to construct the detention basin within the Basin Premises and necessary to relocate the swales as depicted on Exhibit "A" (collectively, the "**Adjacent Areas**"). Such license shall terminate upon completion of the Building and shall only be applicable during the periods in which Tenant is performing construction within the Adjacent Areas. To the extent Tenant disturbs the soil within the Adjacent Areas, Tenant shall cause the slopes within the Adjacent Areas to be stabilized in a manner reasonably acceptable to Landlord. Tenant shall bear all costs related to the installation, operation, maintenance, repair and replacement of the Basin Premises and swale relocation and shall repair to the original specifications any damage to the Adjacent Areas resulting from Tenant's work. Landlord reserves the right to use, improve and occupy the Adjacent Areas and Tenant's license shall not limit Landlord's reserved right.

### ARTICLE 3 - LEASE TERM

**3.1 Term.** The initial term of this Lease (said term, together with any exercised Option Terms (as defined in Section 3.2 hereof), is hereinafter referred to as the "**Term**"), shall commence on the Effective Date and shall terminate at the end of the twentieth (20th) Lease Year. For purposes of this Lease, the term "**Lease Year**" shall mean the period beginning on the Rent Commencement Date (as defined in Section 4(a) below) and ending on the last day of the twelfth (12<sup>th</sup>) calendar month following the Rent Commencement Date and each twelve (12) calendar month period thereafter. Within thirty (30) days after the Rent Commencement Date, the parties hereto shall execute a written statement in the form attached hereto as **Exhibit "B"** (the "**Lease Confirmation Certificate**"), setting forth (i) the Rent Commencement Date and the date of expiration of this Lease; (ii) the Option Term notice dates in accordance with Section 3.2 hereof; (iii) the adjustment date(s) for Rent during the Term and any Option Term; and (iv) the other matters referenced in such Lease Confirmation Certificate. The enforceability of this Lease shall not be affected if either party fails or refuses to execute such Lease Confirmation Certificate.

#### **3.2 Extension Options.**

(a) Tenant shall have eight (8) successive options, each entitling Tenant to extend the Term for a period of five (5) years (collectively, the "**Option Terms**" or each an "**Option Term**"), on the same terms and conditions then in effect, except as expressly otherwise provided herein. Provided that Tenant is not in default of this Lease (which for purposes of this Section 3.2(a) shall mean Landlord has not given Tenant notice of a default which Tenant has failed to cure within the cure period provided for in Section 13.1) at the time Tenant delivers notice of Tenant's extension election or at the time the Option

Term is to commence, Tenant may exercise any such extension option for one or more Option Terms by written notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the Term or the then current Option Term, as the case may be; provided, however, if Tenant shall fail to give any such notice within such time limit, Tenant’s right to exercise its option shall nevertheless continue until thirty (30) days after Landlord shall have given Tenant notice of Landlord’s election to terminate such option, and Tenant may exercise such option for the remainder of the Option Term at any time prior to the expiration of such thirty (30) day period.

(b) If Tenant shall fail to give notice to Landlord of Tenant’s election to extend the Term for any of the Option Terms, then the Term shall be automatically extended from month to month upon all of the terms and conditions then in effect including the increased rent as set forth in Section 4.1(a), subject to Tenant’s right under such option to extend the Term for the remainder of the Option Term covered thereby and to Landlord’s right to place the thirty (30) day limit on such option by notice in the manner provided in this Section 3.2.

**3.3 Surrender.** Upon the expiration of the Term, Tenant shall surrender to Landlord the Land in its then existing condition free and clear of all liens created or suffered by Tenant (subject to Tenant’s maintenance and repair obligations hereunder and Section 10.1). In accordance with all Requirements and prior to the expiration of the Term, Tenant shall have the right to remove such structures, improvements, trade fixtures, furniture, equipment, systems and other personal property as Tenant sees fit. Any such removal by Tenant shall not result in the Premises being left in an unsecured, dangerous or unsafe condition or in a manner which increases Landlord’s post-term maintenance or holding costs as compared to the Premises’ condition prior to such removal, but otherwise without representation or warranty of any kind unless otherwise set forth in this Lease. Title to any improvements remaining on the Premises upon the expiration of the Term shall automatically pass to Landlord without the necessity for the execution of any instrument of conveyance, free and clear of all liens created or suffered by Tenant.

**ARTICLE 4 - RENT**

**4.1 Rent.**

(a) Upon the earlier of (i) three hundred sixty five (365) days after the Possession Date; or (ii) the date of Tenant’s opening to the general public for business (excluding any so-called “soft opening” which shall not exceed thirty (30) days in duration) in the Premises (such date is hereinafter referred to as the “**Rent Commencement Date**”), Tenant agrees to pay Landlord at the address referenced in Section 22.4 of this Lease, or such other place as Landlord shall designate in writing, rental for the Premises as follows (the “**Rent**”):

<b>Lease Year</b>	<b>Monthly Rent</b>
1–5	\$7,437.50
6-10	\$8,553.17
11-15	\$9,836.17
16-20	\$11,311.58
<b>Option Terms</b>	
21–25	\$12,442.75
26–30	\$13,687.00
31–35	\$15,055.67
36–40	\$16,561.25
41–45	\$18,217.42
46–50	\$20,039.17
51 – 55	\$22,043.08
56 - 60	\$24,247.42

(b) Beginning as of the Rent Commencement Date, Rent shall be payable in advance, without offset or demand, in equal monthly installments as shown above, on the first day of each and every

calendar month during the Term hereof. Rent for any partial calendar month shall be proportionately reduced for any partial month during the Term. Any amounts due from Tenant to Landlord pursuant to this Lease shall be included within the definition of Rent, and Tenant shall specifically have the notice and cure provisions set forth in Article 13.1 hereof with respect to such other amounts.

(c) If any party to whom Tenant shall not then be paying Rent under this Lease shall demand payment of Rent or other amounts from Tenant alleging the right to receive such Rent or other amount as a result of a transfer of Landlord's interest in this Lease or for any other reason, or if conflicting demands are made on Tenant concerning the payment of Rent by parties comprising Landlord, Tenant shall not be obligated to honor such demand unless Tenant shall receive written instructions to do so from the person to whom Tenant shall then be paying Rent or shall otherwise receive evidence satisfactory to Tenant of the right of the person or entity making the demand. The withholding of Rent, or any other amount payable by Tenant under this Lease, by Tenant pending the determination of the right of the party making the demand shall not be deemed to be a default on the part of Tenant. Notwithstanding the above, this Section 4.1(c) shall only be applicable in the event that The Board of Regents of the University of Idaho is no longer the landlord of the Premises.

(d) Landlord has previously delivered to Tenant an acceptable Form W-9 and ETF form for Tenant's payment of Rent to Landlord.

## ARTICLE 5 - TAXES

### 5.1 Real Estate Taxes.

(a) Landlord represents to Tenant that so long as the Land is owned by The Board of Regents of the University of Idaho and the Constitution of the State of Idaho is not revised so that the lands of the University of Idaho are no longer exempt from taxation, the Land is and shall remain during the Term exempt from real property taxes. Tenant shall be responsible for creating any tax parcels required to assess buildings or other improvements Tenant may place on the Land that may be deemed real property or subject to taxation by any taxing authority and pay all real estate taxes and assessments imposed thereon (collectively "**Real Estate Taxes**"). Tenant shall receive and pay all applicable Real Estate Taxes on the Premises on or prior to the last day on which Real Estate Taxes can be paid without interest or penalty. If the Term of this Lease shall terminate on any date other than the last day of a tax fiscal year, the amount payable by Tenant during the tax fiscal year in which such termination occurs shall be prorated on the basis that the number of days from the commencement of such tax fiscal year to and including said termination date bears to three hundred sixty-five (365).

(b) Real Estate Taxes shall not include the following: (i) income, intangible, franchise, capital stock, estate or inheritance taxes or taxes substituted for in lieu of the foregoing exclusions; (ii) income taxes on rents, gross receipts or revenues of Landlord from the Premises; (iii) any real estate or property tax assessed against the Land (as opposed to improvements constructed or placed on the Land) or (iv) any rollback, greenbelt or similar deferred taxes which are assessed after the Rent Commencement Date, but relate to time periods prior to the Rent Commencement Date by reason of a change in zoning, use or ownership. Landlord shall be responsible for paying, without contribution from Tenant, all taxes and impositions described in clauses (i)-(iv).

(c) If Landlord shall sell or otherwise transfer its interest in the Land and as a result thereof there is a reassessment of the Premises which otherwise would not have occurred but for the change in ownership, then Tenant shall be required to pay any increase in Real Estate Taxes, excluding taxes for the Land. All taxes for the Land due to such reassessment shall be paid by the new landlord in the year of such reassessment and all subsequent years during the Term, if such landlord is subject to real property taxes.

**5.2 Personal Property Taxes.** Tenant shall pay all personal property taxes assessed on Tenant's personal property on the Premises. If Landlord has paid any such tax in the first instance, as required by the applicable taxing authority, Tenant shall reimburse Landlord upon Tenant's receipt of paid

invoices for such taxes, provided that Landlord shall give Tenant notice of any such tax prior to paying same. Nothing herein shall require Landlord to pay any such personal property taxes.

**5.3 Taxes on Rents.** If any governmental authority in any manner levies a tax on rental payable under this Lease or rentals accruing from Tenant's use of property, such tax shall be paid by Tenant either directly or through Landlord; provided, however, that Tenant shall not be liable to pay any income tax imposed on Landlord.

**ARTICLE 6 - UTILITIES**

From and after the Possession Date, Tenant shall pay directly to the applicable utility companies or governmental agencies for all utilities (including, but not limited to, electric, gas, water, sewage or telephone) consumed on the Premises by Tenant during the Term. Landlord shall not take, or permit any person claiming under Landlord to take, any action which shall interrupt or interfere with any utility service to the Premises, except for such time as is reasonably required to maintain, repair or install any such utilities. If interruption or material interference with utility services is caused by the intentional act of Landlord (except when such intentional act is required for preservation of life or property) and continues for longer than one (1) day, Rent shall abate during such interruption or interference period as Tenant's sole and exclusive remedy for such interruption or interference.

**ARTICLE 7 - USE, ASSIGNMENT AND SUBLEASING  
AND COMPLIANCE WITH REQUIREMENTS**

**7.1 Use; No Obligation to Construct, Open or Operate.**

(a) The Premises may be used for any lawful purpose, provided such use is conducted in a clean and orderly manner consistent with other uses in the general area and in compliance with all Requirements. Without limiting the generality of the foregoing, Tenant shall have the right to use the entire Premises as Tenant sees fit in connection with the operation of retail business on the Premises, including, without limitation, the following rights: (i) to use the sidewalks, parking areas and other areas within the Premises for any lawful purpose, including, without limitation, providing food and beverage to employees and customers, for promotional events and for merchandising and display of inventory; (ii) to conduct outdoor sales and to store merchandise outside of the Building; (iii) subject to Section 7.1(c), the display of vehicles, trailers, small tractors and other equipment for sale and/or rental to Tenant's customers; (iv) to install and operate pay telephones or automatic teller machines and other self-serve banking facilities on the exterior wall of the Building or sidewalk in front of the Building or elsewhere on the Premises and (v) use the portion of Farm Road along the southern and western boundary of the Premises (as depicted on **Exhibit "A"**) for access to the Basin Premises (and not the remainder of the Premises) and an underground drainage line between the portion of the Premises consisting of the drainage basin and the remainder of the Premises. In addition to the foregoing, subject to compliance with all Requirements Tenant shall have the right to install, relocate, modify, remove and/or replace facilities and systems used for the transmission of electricity to and for the Building and improvements located on the Premises, including, without limitation, electrical conduits and systems, in order for Tenant to utilize solar energy, new technology, alternative energy, renewable energy and/or other energy efficient sources and alternatives designed to lower energy costs, improve energy efficiency and/or reduce energy consumption. Notwithstanding any provision contained herein or in any other documents, (i) Tenant shall not have any obligation to construct any improvements on the Premises or open or operate in the Premises and (ii) the portion of the Premises consisting of the Basin Premises may only be used for storm water drainage and/or detention.

(b) Landlord represents to the current, actual knowledge of Landlord's general counsel, property manager, and any other person or entity of Landlord that has specific responsibility to receive notice of the following matters, based on having made a reasonable effort to investigate the records of the University of Idaho that there are no exclusive, restrictive or prohibited use agreements encumbering the Premises except as set forth in this Lease, the Permitted Exceptions, or as may be imposed by any Requirements. Except as set forth in this Lease, in no event shall Tenant or the Premises be bound by or subject to any exclusive, restrictive or prohibited use agreement granted by Landlord after the Effective

Date. Except as expressly set forth in this Lease, Tenant is leasing the Premises on an "AS IS, WHERE IS" basis, without any representation or warranty of any kind or nature whatsoever, express or implied, and Tenant acknowledges that no such representations or warranties have been made except as expressly set forth in writing herein. Without limiting the generality of the foregoing, Landlord makes no representation or warranty regarding the zoning of the Premises or allowed uses under such zoning laws.

(c) Notwithstanding Section 7.1(a) above, no portion of the Premises may be used for any obnoxious or offensive uses. For purposes of this Section 7.1(c) an obnoxious or offensive use shall include, but not be limited to, a gun range; the sale of guns as a primary use; cemetery; mortuary; any establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials, books, magazines or videos; a so-called "head shop" or any business or facility selling, supplying, dispensing (which shall be deemed to include vending machines or other self-service facilities) or distributing marijuana or products or by-products derived therefrom, whether by prescription, medical recommendation or otherwise; off-track betting or bingo parlor; junk yard; recycling facility or stockyard; any restaurant deriving more than fifty percent (50%) of its annual gross sales from the sale of alcohol, a bar, tavern or cocktail lounge; a discotheque, dance hall, comedy club, night club or adult entertainment facility; billiard or pool hall; massage parlor, game parlor or video arcade (which shall be defined as any store containing more than three (3) electronic games); a meeting hall, assembly hall, place of worship, or convention center; traveling carnivals or fairs; automotive maintenance or repair facility; car wash; entertainment or recreational facility; daycare; training or educational facility; residential purposes; or for industrial purposes. The foregoing sentence shall not prohibit the occasional "how to" or otherwise incidental instructional demonstration offered in order to promote the sale of retail goods sold from the Premises. In addition, during the Term, Tenant shall not use or permit more than five thousand five hundred (5,500) square feet of the Premises for the display of vehicles and/or trailers for sale and/or lease; provided, however, after the tenth (10th) Lease Year and upon first obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, Tenant shall be permitted to use, or permit the use of, the Premises for a vehicle sales operation that primarily (i) markets new vehicles, or (ii) markets used vehicles that are one (1) to six (6) years old with fewer than 60,000 miles that have been reconditioned to meet high mechanical, electrical, safety and cosmetic standards ("**Quality Vehicle Sales Lot**"). If, after the tenth (10th) Lease Year, Tenant requests in writing Landlord's consent to use the Premises for a Quality Vehicle Sales Lot and Landlord unreasonably withholds it consent, Tenant shall have the right, but not the obligation, to terminate this Lease by providing Landlord with a termination notice that shall specify a specific termination date that shall be at least sixty (60), but no more than two hundred and forty (240) days, from the date of such notice. For the purpose of this Section 7.1(c), (A) the phrase "entertainment or recreational facility" shall include, without limitation, a theater, bowling alley, skating rink, gym, health spa or studio, dance hall, billiard or pool hall, massage parlor, game parlor or video arcade (which shall be defined as any store containing more than three (3) electronic games) and (B) the phrase "training or educational facility" shall include, without limitation, a beauty school, barber college, reading room, kindergarten, place of instruction or any other operation catering primarily to students or trainees as opposed to customers. The phrase "industrial uses" shall include, without limitation, a manufacturing, assembly, printing, or publishing facility.

(d) No portion of the Adjacent Controlled Property (as defined below) may be used for a gun range; the sale of guns as a primary use; cemetery; mortuary; any establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials, books, magazines or videos; a so-called "head shop" or any business or facility selling, supplying, dispensing (which shall be deemed to include vending machines or other self-service facilities) or distributing marijuana or products or by-products derived therefrom, whether by prescription, medical recommendation or otherwise; off-track betting or bingo parlor; junk yard; recycling facility or stockyard; any restaurant deriving more than fifty percent (50%) of its annual gross sales from the sale of alcohol, a bar, tavern or cocktail lounge; a discotheque, dance hall, comedy club, night club or adult entertainment facility; billiard or pool hall; massage parlor, game parlor or video arcade (which shall be defined as any store containing more than three (3) electronic games); or traveling carnivals or fairs.

(e) Tenant shall not permit any drive-thru lane on the Premises that would result in vehicle stacking on Farm Road or A. Street.



## 7.2 Tenant's Exclusive Use.

(a) No portion of any of the property depicted as the single hatched area on **Exhibit "C"** attached hereto and made a part hereof (the "**Adjacent Controlled Property**") shall be used for a home improvement center or hardware store or for any business which sells, displays, leases, rents or distributes the following items or materials, individually or in any combination (collectively, "**Prohibited Home Improvement Items**"): lumber, hardware, roofing materials, tools, plumbing supplies, pool supplies, electrical supplies, paint, wallpaper and other wall coverings, window treatments (including draperies, curtains and blinds), kitchen or bathrooms or components thereof (including tubs, sinks, faucets, mirrors, cabinets, showers, vanities, countertops and related hardware), doors, windows, hard and soft flooring (including tile, wood flooring, rugs and carpeting), siding, ceiling fans, lawn and gardening and garden nursery supplies, artificial and natural plants, outdoor cooking equipment and accessories, patio furniture and patio accessories, Christmas trees, indoor and outdoor lighting systems and light fixtures, cabinets, kitchen and household appliances (excluding countertop appliances), closet organizing systems and interior design services, automotive parts, products and accessories or other home improvement related products generally sold in a retail home improvement center, except for the incidental sale, display, lease, rental or distribution of Prohibited Home Improvement Items. An "incidental sale, display, lease, rental or distribution of Prohibited Home Improvement Items" is one in which there is no more than the lesser of (i) fifteen percent (15%) of the total floor area of such business; or (ii) two thousand five hundred (2,500) square feet of sales and/or display area, relating to Prohibited Home Improvement Items individually or in the aggregate, whichever is greater. The restriction established in this paragraph is hereinafter referred to as "**Tenant's Exclusive Use Right.**" As used herein, the term "**Landlord's Affiliates**" shall mean any person or entity in control of, controlled by or under common control with, Landlord; provided, however, Landlord's Affiliates shall not include the University of Idaho Foundation ("**Foundation**"), the state of Idaho and any Idaho State governmental agency or subdivision that is not governed by Landlord in its capacity as the Board of Regents. Tenant's Exclusive Use Right shall not apply to any property currently owned by the Foundation or acquired by the Foundation from a party other than Landlord. As to any property the Foundation acquires from Landlord, Landlord shall transfer such property to the Foundation subject to Tenant's Exclusive Use Right. Tenant's Exclusive Use Right shall continue so long as the Premises is operated by Tenant or one of Tenant's Affiliates, or is operated by an entity as a business that sells, displays, leases, rents or distributes all or substantially all of the Prohibited Home Improvement Items in the manner similar to Tenant as of the Effective Date. For the purpose of the proceeding sentence, failure to operate the Premises shall only occur when: (i) appropriate operations are not conducted on the Premises for at least six (6) consecutive months, subject to force majeure events, (ii) Landlord thereafter gives Tenant written notice of such lack of operation, and (iii) Tenant fails to reopen and/or operate an appropriate business on the Parcel within one hundred eighty (180) days after Tenant's receipt of such written notice. As used herein, the term "**Affiliate**" shall mean any person or entity in control of, controlled by or under common control with, Tenant. For purposes of this provision, a person or entity shall be deemed to be in control of another if such person or entity owns or has beneficial ownership of fifty percent (50%) or more of the ownership interests of the entity in question or such person or entity owns less than fifty percent (50%) of such ownership interests, but actually controls the management of such entity. Notwithstanding anything to the contrary set forth in this Section 7.2, in no event will the restrictions set forth in this Section 7.2 apply to any of the following uses, as same are currently operated as of the Effective Date: (i) a retail store operating primarily as an office superstore such as, but not limited to, "Staples", "Office Depot" or "Office Max"; (ii) a retail store operating primarily as an art supply or arts and crafts store such as, but not limited to, "Aaron Brothers" or "Michael's"; (iii) a retail store operating in a format substantially similar to the format of a soft goods bed, bath and kitchen supplies retailer, such as, but not limited to, "Linens 'N Things," "Bed Bath & Beyond" or "Strouds"; (iv) a retail store operating primarily for the sale of one or more of the following: gourmet foods, beer and wine for off-premises consumption, imported goods, and furnishings and other products made from wicker or rattan, such as, but not limited to, "Cost Plus" or "Pier 1"; (v) a retail store operated primarily for the sale of clothing, together with the sale of household and related items, such as, but not limited to "Ross Dress for Less" or "TJ Maxx" or "Marshalls"; (vi) a retail store operated primarily for the sale of one or more of the following: (including but not limited to fish, birds, reptiles, dogs, cats and other small mammals), pet grooming, veterinary and other pet services, pet food, pet accessories and other pet products, such as, but not limited to, "PETSMART" or "Petco"; (vii) a retail store operated primarily for selling wearing apparel and related accessories, including, but not limited to,

footwear, luggage, umbrellas, sunglasses, watches, pins, infants', toddlers' and children's items such as baby strollers, stuffed animals, toys and games and children's furniture, cosmetics and other personal care items domestic products such as candles, sundries, furniture and accents for the home, and pre-packaged foods and candies such as, but not limited to, "Old Navy" or "The Gap", "Gap Kids" or "Banana Republic" or a similar concept; (viii) a retail store operated primarily for the sale of one or more of the following: toys, outdoor play equipment, wheel goods, layettes, infant and juvenile food, health and beauty aids, furnishings, clothing, books and records, family and adult games, computers and accompanying software, video and electronic games and equipment, candy and sporting goods such as, but not limited to "Toys "R" Us" or "Zany Brainy"; (ix) a retail store containing at least 15,000 square feet of Floor Area operated primarily for selling consumer electronics such as but not limited to, "Good Guys", "Circuit City" or "Best Buy"; (x) a retail store operated primarily for selling computers, computer software and computer equipment and furniture such as, but not limited to, "Comp USA"; (xi) a retail store operated primarily for the sale of one or more of the following: party goods, paper goods, supplies, costumes, games, candies and related items such as, but not limited to, "Party City" and "Party America", (xii) a retail store operated primarily for the sale of one or more of the following: books, music, books on tape, videotapes, cassettes, DVD's and CD's such as, but not limited to, "Barnes & Noble" and "Borders Books and Music", (xiii) a store operated primarily as a wholesale or retail general merchandise facility which has a merchandising concept based upon a relatively limited number of stock keeping units in a large number of product categories such as, but not limited to, a "Costco" or "Sam's Club", (xiv) a retail store containing at least 30,000 square feet of Floor Area operated primarily as a general merchandise department store such as, but not limited to, "Sears", "Sears Grand" (so long as the garden area does not exceed 5,000 square feet of floor space), "K-Mart", "Kohl's" "JC Penney", "Meir & Frank", "Mervyn's", "Shopko", "Target", "Wal-Mart", "Stein Mart", "Nordstrom", or "Macy's", (xv) a retail store operated primarily as a grocery store or supermarket that primarily sells food and food products such as, but not limited to, a "Fred Meyer", "Kroger", "Albertsons" or "Safeway"; (xvi) a retail store operated primarily as a furniture store selling finished furniture such as, but not limited to, a "RC Willey Store", "Downeast Home", "John Paras Furniture", "IKEA", "Furniture Warehouse", or "United Furniture Warehouse", (xvii) a retail store operated primarily as a closeout retail chain store such as, but not limited to, a "Big Lots", "Family Dollar", or "Liquidation World", (xviii) a retail store or service center operated primarily as a tires and/or service center such as, but not limited to, a "Les Schwab", or "Jiffy Lube" (but not including a general autoparts store such as a "Napa Auto Parts", (xix) a retail store operated primarily for the sale of cut flowers, flower arrangements, gifts and cards, and (xx) a retail store operated primarily for the sale of one or more of the following: pools, pool tables, and gaming tables.

(b) Landlord acknowledges that the grant of Tenant's Exclusive Use Right was a material inducement to Tenant entering into this Lease and agrees that Tenant shall have the right to enforce Tenant's Exclusive Use Right by appropriate injunctive or other equitable relief in addition to any and all remedies at law. If the landlord under this Lease at the time of the violation of Tenant's Exclusive Use Right is not The Board of Regents for the University of Idaho and the violation occurs by virtue of another tenant violating the terms of its lease, Tenant shall have the right to enforce Tenant's Exclusive Use Right against such other tenant by appropriate injunctive or other equitable relief in addition to any and all remedies at law, provided that the then landlord under this Lease shall reimburse Tenant for all expenses incurred by Tenant in enforcing Tenant's Exclusive Use Right, including reasonable attorney's fees, and the thirty (30) day period shall be extended to one hundred eighty (180) days provided the then landlord promptly commences its efforts to cause the offending tenant to cease such violation (which efforts shall include the filing of suit). If such violation has not ceased within one hundred eighty (180) days, Tenant shall at any time thereafter be entitled to terminate this Lease by written notice to Landlord, whereupon this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties, or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination.

(c) The restrictions set forth in this section shall not apply to any tenant under any lease as to all or a portion of the Adjacent Controlled Property existing as of the Effective Date (determined without regard to any amendments thereto made after the Effective Date) during the term of such other tenant's lease (including all renewals or extensions pursuant to options contained in such lease as of the Effective Date), if such lease does not give the landlord under such lease the legal right to enforce Tenant's Exclusive Use Right against such tenant. However, to the extent that such lease gives the landlord under

such lease the legal right to enforce Tenant's Exclusive Use Right against such existing tenant, such landlord shall do so. By way of example, if another tenant's lease does not include any express reference to Tenant's Exclusive Use Right, but such lease restricts the tenant to a particular use which is different than and does not overlap with Tenant's Exclusive Use Right, then such landlord would be required to prohibit such other tenant from violating Tenant's Exclusive Use Right.

### 7.3 Assignment and Subletting.

(a) Tenant shall have the right to assign this Lease and to sublet all or any portion of the Premises without Landlord's consent. Upon an assignment of the entirety of the Premises for the remaining Term to an assignee having a net worth equal to or greater than One Hundred Million Dollars (\$100,000,000), Tenant shall be released from liability arising hereunder after the date of such assignment provided such assignee assumes in writing for the benefit of Landlord all liability arising hereunder after the date of such assignment. Further, in the event Landlord and any assignee modify or amend this Lease without Tenant's consent so as to increase the obligations of Tenant hereunder, Tenant's liability hereunder shall not be increased, but instead shall continue as it existed prior to such modification or amendment. Subject to Landlord's right to Rent (in the amounts set forth in this Lease), Tenant shall be entitled to any and all rent and other consideration relating to any such subleasing or assignment.

(b) Notwithstanding anything to the contrary in this Lease, Tenant may at any time execute and deliver one or more mortgages, deeds to secure debt or deeds of trust (any such mortgage, deed to secure debt or deed of trust is herein called a "**Leasehold Mortgage**") granting a lien or security interest in Tenant's leasehold estate and rights hereunder without the consent of Landlord; provided, however, that Tenant shall remain liable hereunder for the payment of Rent and any additional rent payable hereunder and for performance of all the obligations of Tenant under this Lease. In no event shall any such Leasehold Mortgage encumber Landlord's fee interest in the Premises. If either Tenant or the holder of any such Leasehold Mortgage notifies Landlord in writing of the existence of such Leasehold Mortgage and the address of the holder thereunder for the service of notices, such holder shall be deemed to be a "**Leasehold Mortgagee**" as such term is used in this Lease. Landlord shall be under no obligation under this provision to any holder of a Leasehold Mortgage of whom Landlord has not received such notice.

(i) If an event of default by Tenant under this Lease occurs, Landlord shall give written notice thereof to any Leasehold Mortgagee, and Landlord shall take no action to terminate this Lease or to interfere with the occupancy, use or enjoyment of the Premises, provided that (A) if such event of default is a default in the payment of any installment of Rent, any additional rent or the provision of insurance coverage, such Leasehold Mortgagee cures such default not later than thirty (30) days after receipt of such notice of default; (B) if such event of default is a default in observing or performing any other covenant or condition to be observed or performed by Tenant hereunder, and such default can be cured by such Leasehold Mortgagee without obtaining possession of the Premises, such Leasehold Mortgagee remedies such default within sixty (60) days after receipt of such notice of default; provided, however, in the case of a default that cannot with diligence be cured, or the curing of which cannot be commenced, within such sixty (60) days, such Leasehold Mortgagee shall have such additional period as may be necessary to cure such default with diligence and continuity; or (C) if such event of default (other than a default in the payment of any installment of Rent, any additional rent or the provision of insurance coverage) is a default that can only be remedied by such Leasehold Mortgagee upon obtaining possession of the Premises, such Leasehold Mortgagee obtains such possession with diligence and continuity, through a receiver or otherwise, and cures such default within sixty (60) days after obtaining such possession provided, however, in the case of a default that cannot with diligence be cured, or the curing of which cannot be commenced, within such period of sixty (60) days (other than a default in the payment of any installment of Rent, any additional rent or the provision of insurance coverage), such Leasehold Mortgagee shall have such additional period as may be necessary to cure such default with diligence and continuity.

(ii) If any Leasehold Mortgagee or a person designated by such Leasehold Mortgagee either becomes the owner of the interest of Tenant hereunder upon the exercise of any remedy provided for in the Leasehold Mortgage, or enters into a new lease with Landlord as provided in

Section 7.3(b)(iii) below such Leasehold Mortgagee or such person shall have the right to assign to any person such interest or such new lease subject to the provisions of Section 7.3(a).

(iii) If prior to the end of Term of this Lease, this Lease terminates or is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, any Leasehold Mortgagee or a person designated by such Leasehold Mortgagee shall have the right, exercisable by notice to Landlord, within thirty (30) days after the effective date of such termination, to enter into a new lease of the Premises with Landlord. In the event there is more than one Leasehold Mortgagee with the right set forth in this section and more than one Leasehold Mortgagee seeks to enforce the terms of this section, Landlord may, to the exclusion of all others, enter into a new lease with the Leasehold Mortgagee with the most senior lien on the Premises as compared to the other Leasehold Mortgagees seeking to enforce the terms of this section. The term of said new lease shall begin on the date of the termination of this Lease and shall continue for the remainder of the Term (including the right to exercise all extension options pursuant to Section 3.2(a) above). Such new lease shall otherwise contain the same terms and conditions as those set forth herein, except for requirements that are no longer applicable or have already been performed, provided that such Leasehold Mortgagee shall have cured all defaults on the part of Tenant hereunder that are susceptible of being cured by the payment of money, and that such new lease shall require the tenant thereunder promptly to commence, and expeditiously to continue, to cure all other defaults on the part of Tenant hereunder to the extent susceptible of being cured. This provision shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this provision were a separate and independent contract among Landlord, Tenant and each Leasehold Mortgagee.

(iv) No Leasehold Mortgagee shall become personally liable for the performance or observation of any covenants or conditions to be performed or observed by Tenant unless and until such Leasehold Mortgagee becomes the owner of Tenant's interest hereunder upon the exercise of any remedy provided for in any Leasehold Mortgage or enters into a new lease with Landlord pursuant to Section 7.3(b)(iii) above. Thereafter, such Leasehold Mortgagee shall be liable for (A) the performance and observance of such covenants and conditions only so long as such Leasehold Mortgagee owns such interest or is the lessee under such new lease, and (B) any defaults by such Leasehold Mortgagee occurring during the period it owned such interest or was the lessee under such new lease.

(v) Upon the reasonable request of any Leasehold Mortgagee, Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision for the purpose of implementing the protective provisions contained in this Lease for the benefit of such Leasehold Mortgagee in allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of its proposed Leasehold Mortgage on the occurrence of a default under the terms of the Lease. Landlord and Tenant shall execute, deliver and acknowledge any amendment reasonably necessary to affect any such requirement; provided, however, that any such amendment shall not in any way affect the Term or rental under this Lease nor otherwise adversely affect any rights of Landlord under this Lease.

#### **7.4 Compliance with Requirements.**

(a) Subject to the terms of Article 19 below applicable to Hazardous Substances (as defined in Section 19.2 below) and notwithstanding any other provision of this Lease to the contrary, Tenant shall, at Tenant's own cost and expense, comply with all Requirements applicable to the Premises. The term "**Requirements**" shall mean all applicable requirements of all laws, orders, ordinances, rules and regulations of federal, state, county and municipal authorities, and of any certificate of occupancy or other direction issued pursuant to law by any public officer or officers, which shall relate to the Premises or the use, occupancy or control thereof or the conduct of any business thereon, including those relating to or which necessitate structural changes or improvements or alteration, repair or removal of any improvements on any part of the Premises, storm water drainage for the Premises, and landscaping to be placed on the Premises. Notwithstanding the foregoing, Landlord, not Tenant (except to the extent such violation or breach is caused by the negligent or wrongful act or omission of Tenant, or Tenant's agents, contractors, invitees, servants or employees), shall be responsible for any violations or breaches of the Requirements arising prior to the Possession Date or otherwise caused by Landlord.

(b) Tenant shall have the right, at its own cost and expense, to contest or review by legal proceedings the validity, legality or applicability of any Requirement, and during such contest, Tenant may refrain from complying therewith, provided that such compliance may be deferred only if (i) neither Tenant nor Landlord will thereby be subjected to civil or criminal liability for failure to comply therewith; (ii) compliance may be so deferred without the incurrance of any lien, charge or liability of any kind against the Premises or any interest therein or part thereof; (iii) Tenant prosecutes the contest in good faith and with due diligence, and (iv) failure to immediately comply is not deemed to pose an imminent threat to human life or safety. Tenant covenants and agrees to indemnify, defend, protect and hold Landlord harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against Landlord and arising from or occasioned by any violation of or failure to comply with any Requirement applicable to Tenant or the Premises. Landlord shall at all times during the Term cooperate with Tenant, at Tenant's expense, in requesting such modifications, changes in zoning, variances, special use permits and such other reasonable changes in Requirements affecting the Premises, as Tenant may request.

## **ARTICLE 8 - MAINTENANCE AND REPAIRS; IMPROVEMENTS**

**8.1 Tenant's Repairs to Premises.** Tenant shall maintain the Premises in a good and clean condition generally consistent with the surrounding retail properties, as currently operated, owned by the Board of Regents of the University of Idaho, and from time to time remove weeds, noxious plants, dead plants, shrubs and trees, and keep landscaping areas watered, mowed and trimmed as the weather condition permits, and shall be responsible for all repairs to the Premises except repairs or replacements necessitated by damage caused by the willful or negligent act of Landlord, its employees, agents and contractors (which repairs shall be the liability of Landlord). Additionally, Tenant shall maintain, repair and replace (as necessary) the drainage line under Farm Road that provides for drainage to the portion of the Premises consisting of the Basin Premises. All development and construction on and to the Premises and all maintenance, repair and other work with respect thereto required hereunder shall be Tenant's sole responsibility and Landlord shall have no obligation with respect thereto, except as may be specifically otherwise set forth herein.

**8.2 Landlord's Maintenance Obligations.** Landlord shall have no obligation to maintain, repair or replace all or any portion of the Premises, except as set forth in Section 8.1, and Tenant waives any Requirement which may obligate Landlord to do the same.

**8.3 Demolition and Construction of Improvements.** Tenant shall have the right, at its sole cost and without the necessity of obtaining Landlord's consent, to (a) make at any time and from time to time, improvements and alterations to the Premises (including the construction and installation from time to time of one or more signs (subject to Article 17) and the installation of one or more sets of satellite receiving equipment or the like on the Land), (b) to raze or demolish any improvements or building on the Premises (including any Building constructed by Tenant) without any requirements to rebuild or reconstruct and (c) construct other improvements on the Premises, so long as (i) Tenant complies with all applicable Requirements and Sections 2.1(b) and 3.3, (ii) and any drive-thru lane(s) do not result in any vehicle stacking on Farm Road or A Street and (iii) there is no change to the Premises that creates any change to any offsite drainage from the Premises unless otherwise approved in writing by Landlord, which approval will not be unreasonably withheld, conditioned or delayed. Landlord hereby approves of Tenant's construction of the detention basin within the Basin Premises and the relocation of the swales as depicted on **Exhibit "A"**, which may change any offsite drainage from the Premises in its current state as of the Effective Date. All construction shall be done in a good and workmanlike manner. Upon commencement, the construction work shall be prosecuted to completion with reasonable diligence, subject to events of force majeure. Landlord shall cooperate with Tenant and shall execute all instruments necessary or appropriate to obtain all permits, licenses and other approvals to make such alterations and improvements from the applicable governmental authorities to satisfy the Requirements.

**8.4 Fixtures.** Any structures, trade fixtures, furniture, equipment, systems and other personal property that Tenant places or installs in the Premises, at its expense prior to or during the Term hereof, shall remain Tenant's property and may be removed at any time and from time to time by Tenant.

**ARTICLE 9 - INSURANCE**

**9.1 Tenant's Insurance.** From and after the Possession Date, Tenant shall maintain the following insurance coverages:

- (a) commercial general liability insurance, including, but not limited to contractual liability, covering the Premises against claims for bodily injury, personal injury and damage to property with minimum limits of five million dollars (\$5,000,000) combined single limit;
- (b) "all risk" property insurance on the Premises and on the betterments and improvements to the Premises in an amount not less than the replacement cost thereof; and
- (c) workers' compensation or similar coverage for the benefit of Tenant's employees.

Any insurance required to be maintained by Tenant may be maintained in whole or in part either under a plan of self-insurance, or from a carrier which specializes in providing coverage to or for Tenant or its affiliates, or firms in the same or related businesses if (i) Tenant's net worth exceeds One Hundred Million Dollars (\$100,000,000) according to the most recent consolidated financial statement of Tenant, singly or together with its parent corporation, determined in accordance with generally accepted accounting principles (GAAP), as evidenced and set forth in the annual report of Tenant or its parent corporation, or (ii) Tenant's market capitalization equals at least One Billion Dollars (\$1,000,000,000). At any time during the tenth, twentieth, thirtieth and fortieth Lease Years, Landlord may require the dollar amount set forth in Section 9.1(a) to be increased to reflect the then current rates of insurance regularly maintained by similar situated lessees under similar leases with similar facilities.

**9.2 Insurance Certificates.** Tenant shall name Landlord as an additional insured under the policies carried pursuant to Section 9.1(a) and Section 9.1(b) above. All of the foregoing insurance policies required pursuant to Section 9.1 above will be written with companies of recognized standing and will provide that the party named as an additional insured shall be given a minimum of ten (10) days written notice by any such insurance company prior to the cancellation, termination or alteration of the terms or limits of such coverage. Tenant will deliver to Landlord copies of the foregoing insurance policies or certificates thereof within thirty (30) days after the Possession Date and evidence of all renewals or replacements of same not less than ten (10) days prior to the expiration date of such policies. An alternative to delivering a certificate of insurance, Tenant may provide Landlord with a website address maintained by Tenant's insurance consultant which shall enable Landlord to electronically review all insurance maintained by Tenant from time to time during the term to confirm Tenant's compliance with the terms of this Lease related to insurance. All such policies may be maintained under a blanket insurance policy of the insuring party (or by self-insurance as to Tenant, as aforesaid). Failure of Landlord to identify a deficiency from evidence that is provided shall not be construed as a waiver of Tenant's obligation to maintain such insurance. By requiring this insurance, Landlord does not represent that coverage and limits will necessarily be adequate to protect Tenant, and such coverage and limits shall not be deemed as a limitation on Tenant's liability under the terms of the Lease.

**9.3 Mutual Release; Waiver of Subrogation.**

(a) Tenant hereby releases Landlord and anyone claiming through or under Landlord by way of subrogation or otherwise from any and all insured loss of or damage to the Premises, or Tenant's personal property, whether or not caused by negligence or fault of Landlord. In addition, Tenant shall cause any property insurance policy carried by it insuring the Premises or the contents thereof to be written to provide that the insurer waives all rights of recovery by way of subrogation against Landlord in connection with any loss or damage covered by the policy.

(b) This Section 9.3(b) shall apply only at such times as Landlord is not the Board of Regents of the University of Idaho, the state of Idaho or any Idaho state governmental agency or subdivision. Subject to the foregoing limitation, Landlord hereby releases Tenant and anyone claiming through or under Tenant by way of subrogation or otherwise from any and all insured loss of or damage to the Premises, or Tenant's personal property, whether or not caused by negligence or fault of Tenant. In addition and subject to the limitations of this Section 9.3(b), Landlord shall cause any property insurance policy carried by it insuring the Premises or the contents thereof to be written to provide that the insurer waives all rights of recovery by way of subrogation against Tenant in connection with any loss or damage covered by the policy.

**9.4 Mutual Indemnification.** Subject to the terms of Section 9.3 above:

(a) Tenant covenants and agrees to indemnify, defend, protect and hold Landlord harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against Landlord arising from or in connection with the loss of life, personal injury and/or damage to property occasioned by any negligent or willful act or omission of Tenant or its agents, contractors, invitees, servants or employees. If Landlord shall, without fault, be made a party to any litigation commenced by or against Tenant, or if Landlord shall, in its reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, the Tenant shall defend Landlord using attorneys reasonably satisfactory to Landlord and shall pay all costs, expenses and reasonable attorneys' fees and costs in connection with such litigation. Landlord shall have the right to engage its own attorneys in connection with any of the provisions of this Section 9.4 or any of the provisions of this Agreement, including, but not limited to, any defense of or intervention by such party, notwithstanding any contrary provisions of the laws or court decisions of the state in which the Premises is located.

(b) This Section 9.4(b) shall apply only at such times as Landlord is not the Board of Regents of the University of Idaho, the state of Idaho or any Idaho state governmental agency or subdivision. Subject to the foregoing limitation, Landlord covenants and agrees to indemnify, defend, protect and hold Tenant harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against Tenant arising from or in connection with the loss of life, personal injury and/or damage to property occasioned by any negligent or willful act or omission of Landlord or its agents, contractors, servants or employees. Subject to the limitation of this Section 9.4(b), if Tenant shall, without fault, be made a party to any litigation commenced by or against Landlord, or if Tenant shall, in its reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, Landlord shall defend Tenant using attorneys reasonably satisfactory to Tenant and shall pay all costs, expenses and reasonable attorneys' fees and costs in connection with such litigation. Tenant shall have the right to engage its own attorneys in connection with any of the provisions of this Section 9.4 or any of the provisions of this Agreement, including, but not limited to, any defense of or intervention by such party, notwithstanding any contrary provisions of the laws or court decisions of the state in which the Premises is located.

**ARTICLE 10 - DAMAGE OR DESTRUCTION**

**10.1 Damage and Destruction to Premises.** If the Premises, or any portion thereof, are damaged or destroyed during the Term by a casualty loss, Tenant shall, at its election and at its expense, either (i) rebuild and restore the Building and/or construct other improvements pursuant to Section 8.3 above; or (ii) raze the Building and such improvements and place the Premises in a safe condition, graded so as not to adversely affect drainage to or from any adjoining land, clean, weed free, and covered with an asphalt dust cap. Tenant shall have full use of and the right to apply any insurance proceeds available for such rebuilding and restoration.

**10.2 Damage and Destruction During Last Three Years of Term.** Notwithstanding the provisions of Section 10.1 hereof, if during the last three (3) years of the Term of this Lease, the Building is damaged to the extent of twenty-five percent (25%) or more of the restoration cost (exclusive of the Land and foundations), then this Lease may be terminated at the election of Tenant by written notice to Landlord within thirty (30) days after the occurrence of such damage or destruction. In the event of any such termination, and subject to the surrender provisions of Section 3.3 and the obligation of Tenant to remove any Hazardous Substances (as defined in Section 19.2 below) introduced onto the Premises during the Term, this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination. All Rent or other charges paid by Tenant for periods after the termination date shall be promptly refunded upon Tenant's full compliance with the terms of this Lease.

## ARTICLE 11 - CONDEMNATION

**11.1 Total Taking.** If the entire Premises shall be taken under power of eminent domain by any public or private authority or conveyed by Landlord to said authority in lieu of such taking, then this Lease shall terminate as of the date of such taking or conveyance, subject, however, to the right of Tenant, at its sole election, (i) to continue to occupy the Premises, subject to the terms and provisions of this Lease, for all or such part, as Tenant may determine, of the period between the date of such taking or conveyance and the date when possession of the Premises shall be taken by or conveyed to the appropriating authority, and any unearned Rent or other charges, if any, paid in advance, for a period after which Tenant has waived all rights to the Premises, shall be refunded to Tenant; and (ii) to keep this Lease in full force and effect in accordance with all Requirements, if termination hereof would reduce any award for a taking, as set forth below in this Article 11. In the event of any such termination, this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination.

**11.2 Partial Taking.** If any taking under the power of eminent domain by a public or private authority or any conveyance by Landlord in lieu thereof shall result in:

- (a) any reduction of the floor area of the Building;
- (b) a taking of any portion of Farm Road, "A" Street or any future road that provides primary access to the Premises which, in Tenant's reasonable discretion, impedes or interferes with access to the Premises or adversely affects the conduct of Tenant's business as theretofore conducted;
- (c) the reduction of the parking serving the Premises to below the greater of (i) the amount required by law; or (ii) four (4) parking spaces for every one thousand (1,000) square feet of floor area of the Premises;
- (d) the closing of any entrance or exit to the Premises; or
- (e) a taking of the Premises that has a material effect on Tenant's ability to operate its business;

then Tenant may, at its election, terminate this Lease by giving Landlord notice of the exercise of Tenant's election within thirty (30) days after the later of (i) Tenant's receipt of actual written notice of such taking or conveyance or (ii) actual conveyance by Landlord of all or any portion of the Premises to the appropriating authority. In the event of termination by Tenant under the provisions of this Section 11.2, this Lease shall terminate as of the date of such taking, subject to the right of Tenant, at its election, to continue to occupy the Premises, subject to the terms and provisions of this Lease, for all or such part, as Tenant may determine, of the period between the date of such taking and the date when possession of the Premises shall be taken by the appropriating authority. In the event of any such termination, this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder



other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination and pursuant to Section 3.3. All Rent or other charges paid by Tenant for periods after the date of such taking or conveyance in lieu thereof shall be promptly refunded. Notwithstanding anything in the foregoing to the contrary, if any condemnation award for any taking would be reduced by the termination of this Lease with respect to a taking, as hereinabove set forth, then Tenant may elect to keep this Lease in full force and effect so as to obtain the highest possible award from the condemning authority.

**11.3 Restoration.** In the event of a taking or conveyance in respect of which Tenant shall not have the right to elect to terminate this Lease or, in the event Tenant, having such right, shall not elect to terminate this Lease, Tenant, at Tenant's sole cost and expense, shall promptly and diligently proceed to restore the remaining portions of the Premises (or raze the Building and any other improvements on the Premises and place the Premises in a safe condition). An equitable proportion of the Rent reserved hereunder and any other charges payable by Tenant hereunder, according to the nature and extent of the injury to the Premises and to Tenant's business, shall be abated until the completion of such restoration and thereafter the Rent and any other charges shall be reduced by the percentage by which the fair market rental value of the Premises immediately after the taking or damage is reduced from the fair market rental value of the Premises immediately prior to the taking or damage; provided, however, no rent shall be abated or reduced with respect to any taking or conveyance of any portion of the Premises for A Street prior to the Possession Date.

**11.4 Award.** All compensation awarded for any taking of the Premises shall belong to the party to whom such award was made. If only one award is made as to the Premises, such award shall be allocated between Landlord and Tenant in accordance with their respective interests.

#### **ARTICLE 12 - SELF HELP**

If Landlord (i) defaults in the performance of any obligation imposed on it by this Lease; (ii) breaches any warranty set forth in Article 20 hereof; or (iii) makes a representation in Article 20 hereof which is or becomes inaccurate, and does not cure such default, breach or inaccuracy within thirty (30) days after written notice from Tenant specifying the default, breach or inaccuracy, Tenant shall have the right at any time thereafter to cure such default, breach or inaccuracy; provided, however, if such default is by its nature not reasonably susceptible of being cured within such thirty (30) day period and such default will not have a material impact on Tenant's business, such thirty (30) day period shall be extended as necessary to provide Landlord the opportunity to cure the default, provided that Landlord within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed for the account of Landlord, and Landlord, within thirty (30) days of the receipt of a statement therefor, shall reimburse Tenant for any amount paid and any expense or contractual liability so incurred. Any sum not paid when due shall accrue interest thereafter at a rate equal to the lesser of the rate announced by The Wall Street Journal from time to time as the "prime rate" plus 2% per annum or the highest rate permitted by law (the interest rate determined hereby is referred to as the "**Interest Rate**"). In the event of an emergency, so as to prevent injury to persons or damage to Premises, Tenant may cure any such default, breach or inaccuracy by Landlord before the expiration of the cure period set forth above, with such written or oral notice to Landlord as is appropriate under the circumstances. In the event Landlord fails to pay Tenant any sum due pursuant to this Article 12 within such thirty (30) day period, Tenant shall be entitled thereafter to offset the amounts owed by Landlord against Rent due hereunder or pursue any and all other remedies Tenant may have.

#### **ARTICLE 13 - DEFAULT**

**13.1 Remedies Upon Tenant's Default.** In the event (a) Tenant shall at any time fail to pay Rent or other monetary amounts herein required to be paid by Tenant and/or maintain the insurance coverage required in Article 9 to the extent Tenant has elected to not self-insure as provided in Article 9, such failure shall continue for ten (10) days after receipt by Tenant of an initial written notice from Landlord and such failure shall continue for an additional ten (10) days after a second written notice by Landlord to Tenant after the expiration of the ten day period following the first notice, or (b) Tenant shall fail to observe

or perform any of the other covenants or agreements required to be performed or observed by Tenant hereunder and any such default shall continue for a period of thirty (30) days after receipt by Tenant of written notice from Landlord and Tenant shall not thereafter cure such default if such default, other than the failure to pay money or maintain insurance, is by its nature not reasonably susceptible of being cured within such thirty (30) day period, such thirty (30) day period shall be extended as necessary to provide Tenant the opportunity to cure the default, provided Tenant within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed, then Landlord shall be entitled at its election, to exercise concurrently or successively, any one or more of the following rights:

(a) to bring suit for the collection of the Rent or other amounts for which Tenant may be in default, or for the performance of any other covenant or agreement of Tenant hereunder, all without entering into possession of the Premises or terminating this Lease;

(b) in the case of a default with respect to a payment of Rent by Tenant to Landlord or for the performance of any other covenant or agreement of Tenant hereunder, to re-enter the Premises with process of law and take possession thereof, without thereby terminating this Lease, and thereupon Landlord may expel all persons and remove all property therefrom, without becoming liable therefor, and relet the Premises and receive the rent therefrom, applying the same first to the payment of the reasonable expenses of such re-entry (including attorney fees and costs), then to interest due, then to any expenses incurred by Landlord on behalf of Tenant, and then to the payment of the monthly Rent accruing hereunder, with the balance, if any, to be held by Landlord for application against future Rent due hereunder. In such event, Landlord shall be obligated to mitigate its damages as required by Idaho law. The commencement and prosecution of any action by Landlord in forcible entry and detainer, ejectment or otherwise, or the appointment of a receiver, or any execution of any decree obtained in any action to recover possession of the Premises, or any re-entry, shall not be construed as an election to terminate this Lease unless Landlord shall, in writing, expressly exercise its election to terminate this Lease, and, unless this Lease be expressly terminated, such re-entry or entry by Landlord, whether had or taken under summary proceedings or otherwise, shall not be deemed to have absolved or discharged Tenant from any of its obligations and liabilities for the remainder of the Term of this Lease;

(c) in the case of a default with respect to a payment of Rent by Tenant to Landlord, to terminate this Lease, re-enter the Premises and take possession thereof. In the event Landlord shall elect to terminate this Lease, all rights and obligations of Tenant, and of any permitted successors or assigns, shall cease and terminate, except that Landlord shall have and retain full right to sue for and collect all Rent of which Tenant shall then be in default and all damages to Landlord by reason of any such breach. In such event, Landlord shall be obligated to mitigate its damages. Tenant shall surrender and deliver up the Premises to Landlord and upon any default by Tenant in so doing, Landlord shall have the right to recover possession by summary proceedings or otherwise and to apply for the appointment of a receiver and for other ancillary relief in such action, provided that Tenant shall have twelve (12) days written notice after such application may have been filed and before any hearing thereon. In such event, Landlord shall again have and enjoy the Premises, fully and completely, as if this Lease had never been made. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Landlord's obtaining possession of the Premises by reason of the breach or violation by Tenant of any of the covenants and conditions in this Lease contained. In the event of termination under this section, Tenant shall meet Tenant's obligations upon the surrender provisions of Section 3.3 and the obligation of Tenant to remove any Hazardous Substances (as defined in Section 19.2 below introduced onto the Premises during the Term; or

(d) exercise any right or remedy available to Landlord at law or in equity. Furthermore, notwithstanding any cure period, any Rent not timely paid shall accrue interest at the Interest Rate on a per annum basis from the date due until the date paid. If any installment of Rent shall not be received by Landlord or Landlord's agent within seven (7) days after such amount shall be due and Landlord has provided written notice to Tenant of an occurrence of Rent not timely paid within the twelve (12) months prior to such failure to pay Rent, Tenant shall pay to Landlord, in addition to interest as provided herein, a late charge equal to five percent (5%) of such overdue amount.

**13.2 Remedies Upon Landlord's Default.** In the event that Landlord shall at any time be in default in the observance or performance of any of the covenants and agreements required to be performed and observed by Landlord hereunder and any such default shall continue for a period of thirty (30) days after written notice to Landlord if such default is by its nature not reasonably susceptible of being cured within such thirty (30) day period, such thirty (30)-day period shall be extended as necessary to provide Landlord the opportunity to cure the default, provided Landlord within said period commences and thereafter diligently proceeds to cure such default without interruption until such cure is completed, Tenant shall be entitled at its election, in addition to all remedies otherwise provided in this Lease and otherwise available at law or in equity under the laws of the United States or the State in which the Premises is located:

(a) to bring suit for the collection of any amounts for which Landlord may be in default, or for the performance of any other covenant or agreement devolving upon Landlord, without terminating this Lease, and/or

(b) to terminate this Lease without waiving Tenant's rights to damages for Landlord's failure to perform any of its covenants or agreements hereunder. In the event Tenant shall elect to terminate this Lease, all rights and obligations of Tenant, and of any permitted successors or assigns, shall cease and terminate, except that Tenant shall have and retain full right to sue for and collect all amounts for the payment of which Landlord shall then be in default and all damages to Tenant by reason of any such breach.

**13.3 Indemnification for Breach.** Subject to the terms of Section 9.3 above:

(a) Tenant covenants and agrees to indemnify, defend, protect and hold Landlord harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against Landlord arising from or in connection with the loss of life, personal injury and/or damage to property in connection with the failure to comply with the provisions of this Lease or the breach of any warranty or representation of the indemnifying party contained herein.

(b) This Section 13.3(b) shall apply only at such times as Landlord is not the Board of Regents of the University of Idaho, the state of Idaho or any Idaho state governmental agency or subdivision. Subject to the foregoing limitation, Landlord covenants and agrees to indemnify, defend, protect and hold Tenant harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against Tenant arising from or in connection with the loss of life, personal injury and/or damage to property in connection with the failure to comply with the provisions of this Lease or the breach of any warranty or representation of the indemnifying party contained herein.

**13.4 Remedies Cumulative.** All remedies of Landlord and Tenant herein created or remedies otherwise existing at law or in equity are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other, but in no event shall Landlord have the right to accelerate rental reserved hereunder. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as either Landlord or Tenant shall, as applicable, deem necessary.

#### ARTICLE 14 - QUIET ENJOYMENT

Landlord covenants and warrants that Landlord has good right and full power to let and lease the Premises. Landlord agrees that, contingent upon Tenant's compliance with the terms of this Lease and subject to the power of any applicable public or private authority to take the Premises (or any portion thereof) under the power of eminent domain as provided in Article 11, Tenant shall quietly and peaceably hold, possess and enjoy the Premises for the full Term of this Lease without any hindrance or molestation by any

party whomsoever claiming under Landlord subject to any and all easements, restrictions or encumbrances of record as of the date of this Lease. Landlord will defend the title to the Premises and the use and occupancy of the same by Tenant against the lawful claims of all persons whomsoever, claiming under Landlord subject to any and all easements, restrictions or encumbrances of record as of the date of this Lease, except those claiming by or through Tenant. Subject to the terms of this Lease, Landlord shall be liable to Tenant for any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against Tenant and arising from or attributable to a breach by Landlord of the warranties set forth in this Article 14. Notwithstanding anything to the contrary set forth in the Lease, Landlord may enter the Premises to maintain, repair or replace the water line currently existing on the Premises depicted as "Existing Water Line to be Relocated" on **Exhibit "A"** any time prior to the date that the entirety of such water line is relocated off the Premises by Tenant as may be permitted as provided in Section 2.1(b).

#### ARTICLE 15 - SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT

**15.1 Subordination Contingent Upon SNDA.** Tenant shall, upon the written request of Landlord, subordinate this Lease to the lien of any mortgage upon the Premises, provided that the holder of any such mortgage ("**Mortgagee**") shall enter into a written agreement with Tenant providing that (i) in the event of foreclosure or other action taken under the mortgage by Mortgagee, this Lease and the rights of Tenant hereunder (including Tenant's rights granted pursuant to Article 21 below) shall not be disturbed or diminished, but shall continue in full force and effect so long as Tenant complies with the terms hereof; (ii) such Mortgagee shall permit insurance proceeds and proceeds from condemnation awards to be used for any restoration and repair required by Article 10 or Article 11 of this Lease; and (iii) Tenant shall attorn and recognize such Mortgagee as Landlord hereunder. Such agreement shall be in the form attached hereto as **Exhibit "E"** ("**SNDA**"). As used herein, "**mortgage**" shall include any mortgage, deed of trust, deed to secure debt or other similar instrument and any modification, renewal, restatement, or extension of same. If Landlord sells, conveys or transfers its interest in the Premises or if any Mortgagee of Landlord succeeds to Landlord's interest through foreclosure or deed in lieu thereof, Tenant shall attorn to such succeeding party as its landlord under this Lease promptly upon any such succession, provided that such succeeding party assumes all of Landlord's duties and obligations under this Lease as more fully set forth in the SNDA and agrees not to disturb Tenant's rights under this Lease contingent upon Tenant's compliance with the terms of this Lease and subject to the power of any applicable public or private authority to take the Premises (or any portion thereof) under the power of eminent domain as provided in Article 11.

**15.2 SNDA as to Existing Mortgages.** Landlord agrees to provide Tenant an SNDA as to all existing mortgages encumbering the Land as of the Effective Date within thirty (30) days after the Effective Date. If Landlord fails to do so, Tenant, in addition to all other remedies available at law, shall be entitled to a total abatement of Rent until such time as such SNDA is provided and may terminate this Lease by written notice to Landlord.

**15.3 Fee for SNDA.** Tenant shall provide any such SNDA at no cost to Landlord except that a charge of One Thousand Five Hundred Dollars (\$1,500) shall be due and payable to Tenant as to the second requested SNDA in any twelve (12)-month period and all additional requested SNDAs in such twelve (12)-month period and as to any requested SNDA which is on a form different from the form attached hereto as **Exhibit "E"** (Tenant expressly reserving the right to require the use of the SNDA in the form attached hereto as **Exhibit "E"**).

#### ARTICLE 16 - TRANSFERS BY LANDLORD

Landlord shall have the unfettered right to transfer its fee interest in the Premises from time to time, but no such transfer or sale of Landlord's interest hereunder shall release Landlord from any of its obligations or duties hereunder prior thereto. Landlord shall be released of any obligations accruing hereunder from and after the date of such transfer upon the assumption of all such obligations and duties by the transferee of Landlord.

## ARTICLE 17 - SIGNAGE

Tenant shall have the right to install such free-standing pylon and monument signs, directional signs and signs on the interior and exterior of the Building or elsewhere on the Premises as may be desired by Tenant, subject to compliance with the Requirements and this Article 17. Landlord, at no cost or expense to Landlord, agrees to reasonably cooperate with Tenant in obtaining any permits and approvals required by the Requirements, as well as any waivers, special use permits and other special permits as may be required in order for Tenant to install any signs which exceed or differ from the signs permitted by the Requirements. Landlord hereby consents to, and Tenant shall not be required to obtain further approval from Landlord, Tenant's standard sign design employed by Tenant on a national basis from time to time. Notwithstanding the foregoing, any sign which flashes, moves, emits sounds, is interactive, automated or includes a monitor or reader board, shall require Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Tenant is hereby informed that any sign which flashes, moves, emits sounds, is interactive, automated or includes a monitor or reader board is unlikely to be approved on the basis that such signs are not compatible with the University environment. Notwithstanding anything to the contrary set forth herein, Tenant shall not install any signage on the portion of the Premises consisting of the Basin Premises except for signs related to safety or warnings in connection with the detention and/or drainage on the Basin Premises.

## ARTICLE 18 - CONTINGENCIES; TENANT'S RIGHTS TO TERMINATE LEASE

The Lease is in full force and effect as of the Effective Date, but Tenant shall have the right to terminate the Lease as follows:

### 18.1 Title.

(a) Landlord agrees to reasonably cooperate in a reasonable manner with Tenant in satisfying those requirements imposed by the national title insurance company selected by Tenant (the "**Title Company**") which are typically satisfied by landlords as to leasehold title insurance policies, including without limitation, proof of authority of Landlord to execute this Lease and like matters and providing the Title Company with an owner's affidavit reasonably acceptable to Landlord and the Title Company.

(b) Tenant shall have until the expiration of the Inspection Period (as defined below) to examine title to the Premises and obtain a survey thereof and notify Landlord of any objectionable matter or defect (including the Permitted Exceptions) which, in Tenant's sole and absolute discretion, affects the insurability of the leasehold title to the Premises and/or which adversely affects the use and/or development of the Premises for the operation of the Retail Store. If Tenant obtains a survey of the Premises, Tenant shall cause its surveyor to stake the boundary of the Premises, notify Landlord when the staking is complete and provide Landlord with an opportunity to inspect the boundary. In the event Landlord is notified of any objectionable matters to title to the Premises on or before the expiration of the Inspection Period, Landlord agrees to, at Tenant's option, promptly employ commercially reasonable efforts to procure a cure for same. In the event, however, Landlord is unable through the exercise of such commercially reasonable efforts to cure any objectionable matter prior to the Possession Date, then at Tenant's option and within twenty (20) days after the Possession Date, Tenant may either (i) take leasehold title to the Premises despite the existence of such matter and such matter shall be set forth in **Exhibit "D"** (collectively, the "**Permitted Exceptions**"); (ii) remove such objectionable matter at its sole cost; or (iii) terminate this Lease by written notice to Landlord. In the event of any such termination, this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination. In the event Tenant does not deliver written notice to Landlord terminating the Lease on or before twenty (20) days after the Possession Date, Tenant's right to terminate the Lease under this Section 18.1(b) shall lapse.

### 18.2 Inspection Period.

(a) **Inspection Period.** From and after the Effective Date, Tenant shall have the right to enter upon the Premises for the purpose of performing such surveys, soil tests, environmental tests, and other due diligence activities as Tenant may desire, in its sole discretion. Tenant shall endeavor to give Landlord prior notice of its entry onto the Premises and its scheduled activities upon the Premises. Tenant covenants and agrees to indemnify, defend, protect and hold Landlord harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against Landlord and arising from or suffered by Landlord by reason of Tenant's inspection activities. In the event Tenant determines, in its sole and absolute discretion during the one hundred twenty (120) day period after the Effective Date (herein referred to as the "**Inspection Period**"), that any aspect of the Premises is not satisfactory for Tenant's use of the Premises, that the development of the Retail Store is not feasible or desirable in any respect or if Tenant desires to terminate this Lease for any reason or for no reason, Tenant may notify Landlord in writing that Tenant is terminating this Lease, whereupon Tenant shall pay Landlord the sum of one hundred dollars (\$100) as independent consideration and this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination. In the event Tenant does not deliver written notice to Landlord terminating this Lease on or before the expiration of the Inspection Period, Tenant's right to terminate the Lease under this Section 18.2(a) shall lapse.

(b) **Restriction Agreement.** During the Inspection Period, Tenant will provide Landlord with a draft of a Restriction Agreement ("**Restriction Agreement**"), which Tenant and Landlord will negotiate during the Inspection Period and, upon approval by both parties, execute on or before the Possession Date. Once the form of Restriction Agreement is agreed to by Landlord and Tenant, Landlord and Tenant shall enter into an amendment to this Lease to agree to the form of Restriction Agreement to be signed by Landlord and Tenant prior to the Possession Date. Failure of the parties to agree to the terms of the Restriction Agreement shall be a basis for termination of the Lease by Tenant and upon such termination by Tenant this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination. The Restriction Agreement will contain Tenant's Exclusive Use Right and the prohibited uses set forth in Section 7.1(c) of this Lease to be recorded against the Adjacent Controlled Property and the Premises. In the event Tenant does not deliver written notice to Landlord terminating this Lease on or before the expiration of the Inspection Period, Tenant's right to terminate the Lease under this Section 18.2(b) shall lapse.

### 18.3 Approvals.

(a) Tenant, at Tenant's sole cost and expense, shall attempt to obtain (and Landlord shall cooperate with Tenant at no cost to Landlord), within two hundred seventy (270) days after the end of the Inspection Period (said period being herein referred to as the "**Approval Period**"), the valid and irrevocable approval, on terms and conditions satisfactory to Tenant, in its sole and absolute discretion, of those permits, licenses and approvals necessary to permit Tenant to construct and operate the Retail Store, from all governmental and quasi-governmental authorities with jurisdiction including, without limitation, permits, licenses and approvals pertaining to platting, replatting or subdividing the Premises, rezoning the Premises, demolition, zoning, building, detention and environmental matters, grading, curb cuts, zero curb lines (i.e., construction of store without curbs between storefront and parking lot), Tenant's beverage and food operations, building setbacks, signage, driveways, turn lanes and traffic signalization, platting and/or subdivision of the Premises, the site plan of the Premises depicting, among other things, four (4) parking spaces per 1,000 square feet in Tenant's store building, and other permits, licenses and approvals as Tenant determines are needed in Tenant's sole and absolute discretion for the operation of the Retail Store (collectively, the "**Approvals**"). Tenant shall be responsible for all costs in connection with the Approval, including, without limitation, any fees or other sums paid to a governmental authority in consideration of obtaining any of the Approvals or utility service, including, but not limited to, impact, loophole and proffer fees. As used herein, the term "**Retail Store**" shall mean a home improvement store containing approximately 102,000 square feet, together with garden center containing approximately 28,000 square

feet and the placement of pylon, monument and storefront signs, the sale of typical home improvement items found in Tenant's stores nationally, and the incidental rights to stage and temporarily store merchandise around the perimeter of the Building, unload product off trucks, sell seasonal items in the parking lot, sell food from outdoor and indoor snack bars accompanied by tables and seating, and have unlimited rights to display and sell products and merchandise from the sidewalk in front of the Building. If all of the Approvals have not been obtained prior to the expiration of the Approval Period, Tenant shall be entitled to extend the Approval Period by up to two (2) period of sixty (60) day each by delivering to Landlord written notice of Tenant's election to extend the Approval Period together with a \$10,000 extension payment ("**Extension Payment**") with respect to the second extension of sixty (60) days only.

(b) Landlord shall cooperate in good faith with Tenant to obtain such Approvals in accordance with this Section 18.3. Landlord hereby authorizes Tenant to seek and apply for all Approvals on Landlord's behalf. If Tenant does not obtain the Approvals, on terms and conditions satisfactory to Tenant without qualification, limitation or restriction, except such qualifications, limitations and restrictions as shall be acceptable to Tenant in its sole and absolute discretion, prior to the expiration of the Approval Period, then Tenant may by written notice to Landlord terminate this Lease, whereupon this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination. In the event Tenant does not deliver written notice to Landlord terminating this Lease on or before the expiration of the Approval Period, Tenant's right to terminate the Lease under this Section 18.3(b) shall lapse.

(c) Landlord, without cost or expense to Landlord and subject to Landlord's reasonable discretion, shall cooperate reasonably with Tenant in making changes and improvements to areas located outside of the Premises required in connection with the Approvals.

**18.4 Real Estate Executive Committee Approval.** Tenant shall have until thirty (30) days after the expiration of the Approval Period (as may be extended) (the "**Final Deal Period**") to obtain the approval of the lease transaction contemplated hereby from Tenant's Real Estate Executive Committee and other executive officers of Tenant, which approval may be granted or withheld in the sole and absolute discretion of such committee and executive officers ("**Final Deal Approval**"). If Tenant fails to obtain such approval, Tenant shall notify Landlord in writing no later than the end of the Final Deal Period that Tenant is terminating this Lease, whereupon Tenant shall pay Landlord the sum of one hundred dollars (\$100) as independent consideration and this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination. In the event Tenant does not deliver written notice to Landlord terminating this Lease on or before the expiration of the Final Deal Period, Tenant's right to terminate the Lease under this Section 18.4 shall lapse.

**18.5 Material Adverse Change.** If, between the expiration of the Inspection Period and the Rent Commencement Date there occurs any material adverse change in the physical condition of the Premises, the status of zoning approvals or entitlements as to the Premises (other than the Approvals contemplated by Section 18.3 above) or any other aspect of the Premises, then Tenant, by written notice to Landlord, may terminate this Lease, whereupon this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination, including, without limitation, Tenant's obligations under Section 3.3. If Tenant terminates this Lease pursuant to this Section 18.5 after the Final Deal Period, Tenant shall pay Landlord the sum of \$300,000, representing liquidated damages, it being agreed that the actual damages suffered by Landlord on account of such termination would be difficult, if not impossible to ascertain. Except for Tenant's obligations under Sections 3.3, 8.1, 9.4(a) and 18.2(a), Landlord waives any right to sue Tenant for damages in excess of said sum and any other right or remedy available to Landlord arising from termination of this Lease pursuant to this Section 18.5. In the event Tenant does not deliver written notice to Landlord terminating this Lease on or before the Rent Commencement Date, Tenant's right to terminate the Lease under this Section 18.5 shall lapse.

**18.6 Additional Right to Terminate.** In addition to the termination rights provided by the foregoing Section 18.1 through Section 18.5, Tenant, may terminate this Lease anytime between the expiration of the Final Deal Period and the earlier of (i) the date Tenant commences improvements on the Premises or (ii) the Rent Commencement Date by providing written notice thereof to Landlord prior to the Rent Commencement Date. In such event, Tenant shall pay Landlord the sum of \$300,000, representing liquidated damages, it being agreed that the actual damages suffered by Landlord on account of such termination would be difficult, if not impossible to ascertain. Except for Tenant's obligations under Sections 3.3, 8.1, 9.4(a) and 18.2(a), Landlord waives any right to sue Tenant for damages in excess of said sum and any other right or remedy available to Landlord arising from termination of this Lease pursuant to this Section 18.6. In such event, this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination. In the event Tenant has modified Premises from its condition as of the Effective Date, Tenant shall surrender the Premises in accordance with Section 3.3 above. In the event Tenant does not deliver written notice to Landlord terminating this Lease on or before the Rent Commencement Date, Tenant's right to terminate the Lease under this Section 18.6 shall lapse.

## ARTICLE 19 - HAZARDOUS SUBSTANCES

**19.1 Landlord's Representation and Warranty.** Landlord warrants and represents that, to the current, actual knowledge of Landlord's general counsel, property manager, and other management personnel with specific responsibility to receive notice of the following matters, based on having made a reasonable effort to investigate the records of the University of Idaho, that, the Land does not now contain nor has it ever contained any Hazardous Substances (as defined in Section 19.2 below) in violation of any applicable Environmental Law or any tanks, and that Landlord and its predecessors and their respective agents, employees and tenants have not caused or permitted any such Hazardous Substances to be released, discharged or deposited onto or in the vicinity of the Land in violation of any applicable law. Landlord warrants and represents further that the current, actual knowledge of Landlord's general counsel, property manager, and any other person or entity of Landlord that has specific responsibility to receive notice of the following matters, based on having made a reasonable effort to investigate the records of the University of Idaho, that (i) the Premises are not subject to any existing, pending or threatened investigation by any governmental authority under any Environmental Laws (as defined in Section 19.2 below); (ii) any handling, generation, transportation, storage, disposal, treatment or use of Hazardous Substances that has occurred on the Premises to date has been in compliance with all Environmental Laws and all other applicable federal, state, and local laws, regulations and ordinances; and (iii) no leak, spill, release, discharge, emission or disposal of Hazardous Substances in violation of Environmental Laws has occurred on or in vicinity of the Premises to date. Landlord hereby authorizes Tenant to conduct, in Tenant's sole and absolute discretion, a Phase I and Phase II Environmental Site Assessment as part of Tenant's reasonable due diligence during the Inspection Period. Prior to conducting the Phase II testing, Tenant shall provide Landlord with a detailed "scope of work" for such Phase II work. Landlord shall have seven (7) business days from receipt of same to review and approve the "scope of work," which approval shall not be unreasonably withheld, conditioned, or delayed. If Landlord fails to approve or disapprove such scope of work within such seven (7) business day period, Landlord shall be deemed to have approved such scope of work. Landlord shall have the right to have a representative of the Landlord present for any such tests. Prior to conducting the Phase II, Tenant shall have obtained and delivered to Landlord all permits required under applicable law and shall have utilities marked by a utility marking service. In addition to any obligations listed in the "scope of work", Tenant shall be responsible for the following at Tenant's sole cost and expense: (a) disposal of any drummed drillings to the extent required in accordance with applicable laws and regulations; and (b) disposal of any water generated, if any, in accordance with all applicable laws and regulations. If Hazardous Substances in violation of Environmental Laws are detected or suspected as a result of any assessment prior to the Possession Date, Tenant shall so inform Landlord in writing and Landlord may terminate this Lease within sixty (60) days after receipt of Tenant's written notice, whereupon this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination. In the event Landlord does not deliver written notice to Tenant terminating this Lease on or before the expiration of such sixty (60) day period, Landlord's right to terminate



the Lease under this Section 19.1 shall lapse. In the event Landlord does deliver written notice to Tenant terminating this Lease on or before the expiration of such sixty (60) day period, Tenant may negate such notice by written notice delivered to Landlord within thirty (30) days after Tenant's receipt of Landlord's notice, and Tenant may expend such sums as Tenant reasonably determines are necessary to remove or abate the condition and to offset said amounts against the next Rent and other charges due under this Lease, provided, however, that such sums shall not exceed \$300,000 and Tenant shall not offset more than 50% of Rent and other charges due under this Lease during any one Lease Year with any surplus being carried forward to subsequent Lease Years until such amount is fully offset.

**19.2 Definition of Hazardous Substances.** "Hazardous Substances" for purposes of this Lease shall be interpreted broadly to include any material or substance that is defined, regulated or classified under any applicable federal, state or local law, regulation or ordinance pertaining to soil, groundwater, surface water, sediment, air and water quality, the handling, generation, transportation, storage, treatment, usage or disposal of Hazardous Substances, air emissions and other environmental matters (collectively, "**Environmental Laws**") as (i) a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601(14), the Federal Water Pollution Control Act, 33 U.S.C. § 1321(14); (ii) a "hazardous waste" pursuant to Section 1004 or Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6903(5), 6921; (iii) toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. § 1317(a)(1); (iv) a "hazardous air pollutant" under Section 112 of the Clean Air Act, 42 U.S.C. § 7412(a)(6); (v) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. § 5102(2); (vi) toxic or hazardous pursuant to regulations currently promulgated under the aforementioned laws or any state or local counterpart to any of the aforementioned laws; or (vii) asbestos, polychlorinated biphenyls, radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum based derivatives and urea formaldehyde.

**19.3 Landlord's Remediation Obligation.** If at any time after the Possession Date Hazardous Substances in violation of Environmental Laws are determined to be present on the Premises (which Hazardous Substances were introduced by Landlord or parties claiming under Landlord other than Tenant or its affiliates), Landlord shall take all steps necessary to promptly remove or otherwise abate all such Hazardous Substances in accordance with all applicable Requirements. Landlord shall employ commercially reasonable efforts not to interfere with the conduct of Tenant's business during any such removal or abatement process. If Tenant determines, in its sole judgment, that Landlord is unable or unwilling to take such steps to remove or abate the Hazardous Substances condition, and that said condition has or will have a material, negative impact upon the conduct of Tenant's business or the safety and health of its employees or customers, then Tenant may, upon giving Landlord at least thirty (30) days' advance notice, (i) elect to terminate this Lease without further liability to Tenant; or (ii) expend such sums as Tenant reasonably determines are necessary to remove or abate the condition and to offset said amounts against the next Rent and other charges due under this Lease, provided, however, that such sums shall not exceed \$300,000 and Tenant shall not offset more than 50% of Rent and other charges due under this Lease during any one Lease Year with any surplus being carried forward to subsequent Lease Years until such amount is fully offset. Notwithstanding the foregoing, if Landlord is able to demonstrate that Landlord is able to remove or abate the Hazardous Substances condition within a reasonable period of time, given the nature and extent of such Hazardous Substances, and Landlord is diligently pursuing such removal or abatement, Tenant shall have no right to terminate the Lease, but Tenant's Rent and other charges payable hereunder shall be equitably reduced by the amount of Land which Tenant cannot use or occupy during the period in which the Hazardous Substances are being removed or abated. Except for the \$300,000 limit on removal or abatement costs, nothing herein shall be deemed to limit any other rights or remedies to which Tenant may be entitled by reason of the existence of Hazardous Substances. If Tenant terminates this Lease, then this Lease shall be of no further force or effect and neither party hereto shall have any further rights, duties or liabilities hereunder other than those rights, duties and liabilities which have arisen or accrued hereunder prior to the effective date of such termination.

**19.4 Landlord's Indemnity.** This Section 19.4 shall apply only at such times as Landlord is not the Board of Regents of the University of Idaho, the state of Idaho or any Idaho state governmental agency

or subdivision. Subject to the foregoing limitation, Landlord covenants and agrees to indemnify, protect and hold Tenant harmless to the fullest extent under applicable federal and state law against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements incurred by Tenant in defending any claims, litigation, suits or proceedings) which may at any time be imposed upon, incurred by or asserted or awarded against Tenant as a result of any Environmental Law violations arising from or out of any Hazardous Substances on, in, under or affecting all or any portion of the Premises (which Hazardous Substances were introduced by Landlord) including, without limitation, (i) the costs of removal of any and all Hazardous Substances from all or any portion of the Premises; (ii) additional costs required to take necessary precautions to protect against the release of Hazardous Substances on, in, under or affecting the Premises into the air, any body of water, any other public domain or any surrounding areas; and (iii) compliance, in connection with all or any portion of the Premises, with all applicable Requirements.

**19.5 Tenant's Indemnity.** Landlord acknowledges that Tenant handles certain Hazardous Substances as part of its intended operations. Tenant shall use, handle, store, and dispose of such Hazardous Substances in compliance with all applicable Requirements and Environmental Laws. Tenant further covenants and agrees to indemnify, defend, protect and hold Landlord harmless to the fullest extent under applicable federal and state law against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against Landlord and arising from or out of any Hazardous Substances on, in, under or affecting all or any portion of the Premises introduced by Tenant or parties claiming under Tenant including, without limitation, (i) the costs of removal of any and all Hazardous Substances from all or any portion of the Premises; (ii) additional costs required to take necessary precautions to protect against the release of Hazardous Substances on, in, under or affecting the Premises into the air, any body of water, any other public domain or any surrounding areas; and (iii) compliance, in connection with all or any portion of the Premises, with all applicable Requirements.

**19.6 Tenant's Remediation Obligation.** If Hazardous Substances are determined to be present on the Premises in violation of any Environmental Laws and such Hazardous Substances have been introduced by Tenant or parties claiming under Tenant, Tenant shall take all steps necessary to promptly remove or otherwise abate all such Hazardous Substances in accordance with all applicable Requirements. Tenant shall use its best efforts not to interfere with the conduct of any adjoining business or land during any such removal or abatement process. If Landlord determines, in its sole judgment, that Tenant is unable or unwilling to take such steps to remove or abate the Hazardous Substances condition, and that said condition has or will have a negative impact upon the Premises, Landlord's surrounding properties or the safety and health of Landlord's tenants, students, faculty, or agricultural or ranching interests, then Landlord may, upon giving Tenant at least thirty (30) days' advance notice, elect to cause the removal (or other cleanup acceptable to Landlord) of any Hazardous Substances from the Premises. The costs of the Hazardous Substance removal and any other cleanup (including monitoring, testing, permitting, transportation and storage costs) will be additional rent under this Lease, whether or not a court has ordered the cleanup, and those costs will become due and payable on written demand by Landlord. Tenant will give Landlord, its agents, and employees access to the Premises to remove or otherwise clean up any Hazardous Substances. Landlord, however, has no affirmative obligation to remove or otherwise clean up any Hazardous Substances, and this Lease will not be construed as creating any such obligation. Notwithstanding the foregoing, if Tenant is able to demonstrate to Landlord's sole satisfaction that Tenant is able to remove or abate the Hazardous Substances condition within a reasonable period of time and Tenant is diligently pursuing such removal or abatement, Landlord shall have no right to cause the removal of such Hazardous Substances. Nothing herein shall be deemed to limit any other rights or remedies to which Landlord may be entitled by reason of the existence of Hazardous Substances.

**19.7 Survival.** The provisions of this Article 19 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 20 - LANDLORD'S REPRESENTATIONS AND WARRANTIES

**20.1 Landlord's Representations and Warranties.** Landlord represents and warrants to Tenant as follows:

(a) The person signing this Lease has the full power and authority to execute this Lease. Landlord may lease the Premises in accordance herewith and may otherwise perform the obligations of Landlord hereunder, without the necessity of obtaining consent from any third party not previously obtained. Landlord (i) has complete and full authority to execute this Lease and to lease to Tenant good and marketable leasehold title to the Premises; (ii) will execute and deliver such other documents, instruments, agreements, including, but not limited to, affidavits and certificates reasonably necessary to effectuate the transaction contemplated herein; and (iii) will take all such additional internal action necessary or appropriate to effect and facilitate the consummation of the lease transaction contemplated herein on Landlord's behalf.

(b) To the current, actual knowledge of Landlord's general counsel, property manager, and other management personnel with specific responsibility to receive notice of the following matters, based on having made a reasonable effort to investigate the records of the University of Idaho, as of the Effective Date there is no action, litigation, suit, proceeding or investigation pending or threatened by any organization, person, individual or governmental agency, including, without limitation, governmental actions under condemnation authority or proceedings similar thereto (but excluding any action, litigation, suit, proceeding or investigation of a general nature that may affect real property generally), that directly affects the Premises (or any portion thereof) or Landlord that would become a cloud on the title to the Premises or any portion thereof or that questions the validity or enforceability of the transaction contemplated by this Lease or any action taken pursuant hereto in any court or before or by any federal, district, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.

(c) To the current, actual knowledge of Landlord's general counsel, property manager, and other management personnel with specific responsibility to receive notice of the following matters, based on having made a reasonable effort to investigate the records of the University of Idaho, as of the Effective Date Landlord has not received notice of any violations of any Requirements with respect to the Premises, the occupancy thereof or construction thereon.

(d) Landlord is not a "foreign person" as that term is defined in the Internal Revenue Code Section 1445(f)(3), nor is the lease of the Premises subject to any withholding requirements imposed by the Internal Revenue Code, including, but not limited to, Section 1445 thereof.

(e) Tenant has examined the Premises prior to taking possession of such. Tenant's taking possession shall be conclusive evidence as against Tenant that at the time of taking possession the Premises were in good order and satisfactory condition. Except as expressly set forth in this Lease, Landlord does not make and hereby disclaims any warranties, express or implied, with respect to the Premises, and Tenant takes the Premises in their present "as is" condition, with all faults including latent and patent defects. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representations or warranties, nor is Tenant relying on any representations or warranties made by Landlord or Landlord's agent, with respect to the Premises or with respect to the suitability of the Premises for the conduct of Tenant's business, nor has Landlord agreed to undertake any modification, alteration, or improvement of the Premises except as provided in this Lease.

(f) To the current, actual knowledge of Landlord's general counsel, property manager, and other management personnel with specific responsibility to receive notice of the following matters, based on having made a reasonable effort to investigate the records of the University of Idaho, the Premises are free and clear of any leases, tenancies or claims of parties in possession except as set forth in the Permitted Exceptions and the water line currently existing on the Premises depicted as "Existing Water Line to be Relocated" on **Exhibit "A"**.

(g) To the current, actual knowledge of Landlord's general counsel, property manager, and other management personnel with specific responsibility to receive notice of the following matters, based on having made a reasonable effort to investigate the records of the University of Idaho, this Lease and the rights granted to Tenant hereunder shall not violate and are not inconsistent with any other lease or agreement relating to the Premises except as set forth in the Permitted Exceptions.

## ARTICLE 21 - RIGHT OF FIRST OFFER

**21.1 Grant of Right of First Offer.** During the term of this Lease, Landlord hereby grants to Tenant a right of first offer (the "**First Offer Right**"), to purchase Landlord's Interest on the following terms and conditions, provided, however, the First Offer Right shall not be applicable if any Requirement requires Landlord to conduct the sale of the Land in a public bidding process. As used herein "**Landlord's Interest**" shall mean (i) Landlord's fee interest in the Land or such larger tract which includes the Premises; and (ii) if Landlord is a corporation, partnership, limited liability company, trust or other entity, the principal asset of which is the Premises, any ownership or beneficial interest in such corporation, partnership, limited liability company, trust or other entity representing the right to receive fifty percent (50%) or more of the profits of such entity or which otherwise results in a transfer of control of such entity. Landlord's Interest shall not include any conveyance for financing purposes. If at any time after the Effective Date and during the term of this Lease, Landlord desires to offer Landlord's Interest for sale, prior to offering to sell Landlord's Interest, Landlord shall offer Tenant the right to purchase Landlord's Interest by sending to Tenant a written notice (the "**Offer Notice**") of the specific terms of an offer to sell including price ("**Offering Amount**"), payment terms, conditions of title, costs of escrow and all other material terms, and a proposed purchase agreement reflecting such terms, executed by Landlord ("**Proposed Agreement**"). Tenant shall have sixty (60) days from the receipt of the Offer Notice within which to exercise such First Offer Right by executing the Proposed Agreement and returning the same to Landlord ("**Tenant's Exercise Notice**"). This First Offer Right shall not apply to the transfer or conveyance of Landlord's Interest to another "governmental entity" as such term is defined in Idaho Code Section 6-902.

**21.2 Failure by Tenant to Exercise.** The failure to provide Tenant's Exercise Notice to Landlord within such sixty (60) day period shall be conclusively deemed to be and constitute a rejection of the Offer Notice by Tenant and a waiver of Tenant's First Offer Right as to such Offer Notice. In such event Landlord shall be free thereafter to sell Landlord's Interest in an amount equal to or greater than the Offering Amount as set forth in the Offer Notice, provided such sale occurs within 270 days after the date of the Offer Notice. If Landlord intends to sell Landlord's Interest at a price less than the Offering Amount or subsequent to the expiration of 270 days after the Offer Notice, Landlord shall be required to offer Landlord's Interest to Tenant pursuant to the terms hereof.

**21.3 Exercise by Tenant.** If an Offer Notice is validly accepted by Tenant, then Tenant shall purchase Landlord's Interest from Landlord on the terms and conditions set forth in the Proposed Agreement.

**21.4 Continuing Offer Right.** This is a continuing right of first offer which shall apply during the entire term of this Lease; provided, however, the First Offer Right shall not be applicable if any Requirement requires Landlord to conduct the sale of the Land in a public bidding process.

## ARTICLE 22 - MISCELLANEOUS

**22.1 Holding Over.** In the event of Tenant's continued occupancy of the Premises after the expiration of the Term, or any earlier termination provided or permitted by this Lease, such tenancy shall be from month to month. All covenants, provisions, obligations and conditions of this Lease shall remain in full force and effect during such month-to-month tenancy except Tenant agrees to pay 1.10 times the Rent for the month immediately preceding the expiration or termination, unless a different rate shall be agreed to in writing.

**22.2 Non-Waiver of Default.** No acquiescence by either party to any default by the other party hereunder shall operate as a waiver of its rights with respect to any other breach or default, whether of the

same or any other covenant or condition, nor shall the acceptance of Rent by Landlord at any time constitute a waiver of any rights of Landlord.

**22.3 Memorandum of Lease.** As a material condition to Tenant's execution of this Lease, upon its execution of this Lease, Landlord and Tenant may execute and record a Memorandum of Lease (the "**Memorandum**") in the form attached hereto as **Exhibit "F"**.

**22.4 Notices.** All notices shall be in writing and shall be sent by either personal delivery, a reputable overnight courier which keeps receipts of delivery (such as UPS or Federal Express), through the facilities of the United States Post Office, postage prepaid, certified or registered mail, return receipt requested, or by electronic transmission. Unless expressly provided to the contrary elsewhere in this Lease, any such notice shall be effective upon delivery, if delivered by personal delivery or overnight courier, and on the date of the postmark, if sent by U.S. mail in accordance with the above, and on the date of electronic transmission provided that a copy of such notice is given in any other manner permitted hereunder within three (3) days after the date of such electronic transmission. 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:

- |   |   |
|---|---|
| To Landlord:                                | Board of Regents of the University of Idaho<br>Vice President Finance and Administration<br>875 Perimeter Dr., MS 3168<br>Moscow, Idaho 83844-3168<br>Attention: Real Estate Officer<br>Email: <a href="mailto:gerardb@uidaho.edu">gerardb@uidaho.edu</a> |
| With a copy in all cases to:                | Board of Regents of the University of Idaho Home<br>Office of General Counsel<br>875 Perimeter Dr., MS 3168<br>Moscow, Idaho 83844-3168<br>Attention: General Counsel   |
| To Tenant<br>(Pre-Rent Commencement Date):  | Home Depot U.S.A., Inc.<br>2455 Paces Ferry Road<br>Building C-19<br>Atlanta, Georgia 30339-4024<br>Attention: Barry Simmons<br>Email: <a href="mailto:Barry_Simmons@homedepot.com">Barry_Simmons@homedepot.com</a>                                       |
| To Tenant<br>(Post-Rent Commencement Date): | Home Depot U.S.A., Inc.<br>2455 Paces Ferry Road<br>Building C-19<br>Atlanta, Georgia 30339-4024<br>Attention: Property Management<br>Store No.: Moscow, ID<br>Email: <a href="mailto:HD_propmgmt@homedepot.com">HD_propmgmt@homedepot.com</a>            |
| With a copy in all cases to:                | Home Depot U.S.A., Inc.<br>2455 Paces Ferry Road<br>Building C-20<br>Atlanta, Georgia 30339-4024<br>Attention: Assistant General Counsel – Real Estate  |

With a copy  
(pre-Rent Commencement Date):

Troutman Pepper  
11682 El Camino Real, Suite 400  
San Diego, CA 92130  
Attn.: Randal Lejuwaan  
Email: [Randal.Lejuwaan@troutman.com](mailto:Randal.Lejuwaan@troutman.com)

For the purpose of this Lease, Landlord's or Tenant's counsel may provide notices to Tenant or Landlord (as applicable) on behalf of its client and such notices shall be binding on Landlord or Tenant as if such notices have been provided directly by Landlord or Tenant.

**22.5 Successors and Assigns.** Subject to Section 7.3, all covenants, promises, conditions, representations, and agreements herein contained shall be binding upon, apply and inure to the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

**22.6 Time is of the Essence.** Time is of the essence as to the performance of all of the covenants, conditions and agreements of this Lease.

**22.7 Partial Invalidity.** If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

**22.8 Interpretation.** In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either party hereto. Landlord and Tenant acknowledge that they and their counsel have reviewed and revised this Lease and that any otherwise applicable rule of construction or any other presumption to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto.

**22.9 Headings, Captions and References.** The headings and section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof," "hereunder" and "herein" shall refer to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders and the singular form shall include the plural when the context so requires.

**22.10 Brokerage Commissions.** Each party represents and warrants to the other that no real estate broker or agent other than Northwest Retail Partners, Ltd ("**Broker**") has been involved in the procurement of this Lease. Tenant shall pay Broker all commissions due Broker pursuant to a separate agreement between Broker and Tenant. Landlord shall have no obligation to pay Broker a commission. Additionally, each of Tenant and Landlord represent and warrant that it has not retained any other broker, nor otherwise created any claim for any brokerage or other compensation. Each party shall covenant and agree to indemnify, defend, protect and hold the other party harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against the other party by reason of any breach of the foregoing warranties.

**22.11 Governing Law.** The laws of Idaho, without giving effect to its choice of law principals, govern all matters arising under or relating to this Lease, including all tort claims. The venue for any suit or action shall be in Latah County, Idaho.

**22.12 Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or create any partnership, joint venture or other association between Landlord and Tenant.

**22.13 Force Majeure.** In the event that either party shall be delayed or hindered in, or prevented from, the performance of any work, service, or other act required under this Lease to be performed by the party (other than the payment of Rent) and such delay or hindrance is due to strikes, lockouts, acts of God, enemy act, civil commotion, fire or other casualty, or other causes of a like nature beyond the control of the party so delayed or hindered, then performance of such work, service or other act shall be excused for the period of such delay and the period for the performance of such work, service or other act shall be extended for a period equivalent to the period of such delay. In no event shall a lack of financing be deemed an unavoidable delay hereunder.

**22.14 Estoppel Certificates.** Within twenty (20) days after the request by either party, the other party agrees to deliver to the requesting party and to any potential mortgagee, assignee or purchaser of Landlord's or Tenant's interest in the Premises an estoppel certificate, in form attached hereto as **Exhibit "G"** or of substance reasonably satisfactory to both parties, certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, whether same is in full force and effect as modified, and stating the modifications); that, to requested party's reasonable knowledge and belief, there are no defenses or offsets thereto (or stating those claimed by requested party); that there are no defaults by requested party or, to the reasonable knowledge and belief of requested party, on the part of requesting party (or, if such defaults exist, stating their nature). No estoppel certificate provided pursuant to this provision shall amend or modify this Lease. Requested party shall provide such estoppel certificates at no cost to requesting party except that a charge of five hundred dollars (\$500) shall be due and payable as to the second requested estoppel certificate in any twelve (12) month period and all additional requested estoppel certificates in such twelve (12) month period and as to any requested estoppel certificate which requests confirmation of information not referenced above in this section (both parties expressly reserve the right to require the use of an estoppel certificate in the form attached hereto as **Exhibit "G"**).

**22.15 Effective Date.** The "**Effective Date**" of this Lease shall be the date upon which the last party to execute this Lease has done so, as evidenced by the date noted below its signature.

**22.16 Existing Information.** To the current, actual knowledge of Landlord's general counsel, property manager, and other management personnel with specific responsibility to receive notice of the following matters, except for information previously provided or to be provided to Tenant prior to the Rent Commencement Date and information previously obtained from Tenant prior to the Effective Date, as of the Effective Date Landlord is not aware of any information in its possession regarding engineering, environmental and other studies specific to the Premises, including without limitation, surveys, title reports and policies, environmental and engineering reports and drawings for existing buildings, site work and utilities, if any. Should Landlord's general counsel, property manager, and other management personnel with specific responsibility to receive notice of the following matters become aware of this information prior to the Rent Commencement Date, Landlord shall provide such information to Tenant. From time to time students, researchers, professors, employees and contractors of Landlord study the surface and subsurface conditions of Moscow, Idaho and its surrounding communities, and issue reports, studies and documents or other materials based on those studies ("**Studies**"). Notwithstanding this Section 22.16 to the contrary, Landlord's general counsel, property manager, and other management personnel with specific responsibility to receive notice of the following matters shall not be obligated to give Tenant notice of any matters reported in such Studies unless Landlord's general counsel, property manager, and other management personnel with specific responsibility to receive notice of the following matters have actual knowledge of the Studies which require disclosure pursuant to this Section 22.16.

**22.17 Grant of Easements.** Landlord, at no cost or expense to Landlord, shall cooperate with Tenant to grant easements across, under and over the Premises or other property owned by Landlord, in locations and scope reasonably acceptable to Landlord, for the installation, construction, maintenance, repair and replacement of sewer and other utility lines, for rights of way and for other means of ingress and egress necessary for the installation and operation of the Building upon the Land. All such utilities shall be

installed and maintained below the ground level or surface of such easements, except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located on the Premises). Landlord has obtained consent from Landlord's governing board for the authority to grant the easements contemplated by this Section 22.17.

**22.18 Waiver of Landlord's Lien.** Landlord hereby waives in favor of Tenant its landlord lien for rent against any and all of the property of Tenant, its parent, subsidiaries or affiliates to the extent provided in the applicable laws, regulations or ordinances where the Premises are located.

**22.19 Time Periods.** If the time period by which any right, option or election provided under this Lease must be exercised, or by which any act required hereunder must be performed, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

**22.20 Costs and Attorneys' Fees.** This Section 22.20 shall apply only at such times as Landlord is not the Board of Regents of the University of Idaho, the state of Idaho or any Idaho state governmental agency or subdivision. Subject to the foregoing limitation, in the event either party initiates or defends any legal action or proceeding in any way connected with this Lease, the prevailing party in any such action or proceeding (in addition to other relief which may be granted, whether legal or equitable) shall be entitled to recover from the losing party in any such action its reasonable cost and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgement.

**22.21 Counterparts.** This Lease may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

**22.22 Entire Agreement.** This Lease (including the Exhibits attached hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supercedes all prior and contemporaneous representations, statements, understandings, negotiations and agreements, oral or written, between the parties, if any, with respect thereto.

**22.23 Joint and Several Obligations.** In the event any party hereto is comprised of more than one person or entity, the obligations of said persons or entities shall be joint and several.

**22.24 Limitation of Liability.** Except to the extent caused by the negligence or willful misconduct of Landlord, in no event shall Landlord, its agents, employees and/or contractors be liable for any personal injury or death or property damage caused by other lessees or persons in or about the Premises and/or the Building, as the case may be, or caused by public or quasi-public work arising out of any loss of the use of the Premises or any equipment or facilities therein by Tenant or any person claiming through or under Tenant, even if Landlord has been notified of the possibility of such damages and notwithstanding the failure of essential purpose of any warranty contained herein. Additionally, except to the extent caused by the gross negligence or willful misconduct of Landlord, in no event shall Landlord, its agents, employees and/or contractors be liable for any consequential damages arising out of any loss of the use of the Premises or any equipment or facilities therein by Tenant or any person claiming through or under Tenant, even if Landlord has been notified of the possibility of such damages and notwithstanding the failure of essential purpose of any warranty contained herein.

**22.25 Equal Opportunity.** Both parties agree not to discriminate against any employee or applicant for employment in the performance of this Lease, with respect to tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, color, religion, national origin, disability, ancestry or status as a Vietnam veteran.



**22.26 Exhibits.** Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to (by letter or description) herein. The exhibits consist of:

- Exhibit "A" Depiction of the Land
- Exhibit "B" Lease Confirmation Certificate
- Exhibit "C" Depiction of Adjacent Controlled Property
- Exhibit "D" Permitted Exceptions
- Exhibit "E" Form of Subordination, Non-Disturbance and Attornment Agreement
- Exhibit "F" Memorandum of Lease
- Exhibit "G" Form of Home Depot Estoppel Certificate

**[SIGNATURES COMMENCE ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, Landlord and Tenant have caused their duly authorized representatives to execute and deliver this Lease under seal as of the Effective Date.

**LANDLORD:**

BOARD OF REGENTS OF THE UNIVERSITY OF  
IDAHO

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of execution: \_\_\_\_\_, 2023

**[SIGNATURES CONTINUE ON FOLLOWING PAGE]**

**TENANT:**

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

By: \_\_\_\_\_  
Suzanne Russo, Assistant General Counsel

Date of execution: \_\_\_\_\_, 2023

EXHIBIT "A"

DEPICTION OF THE LAND

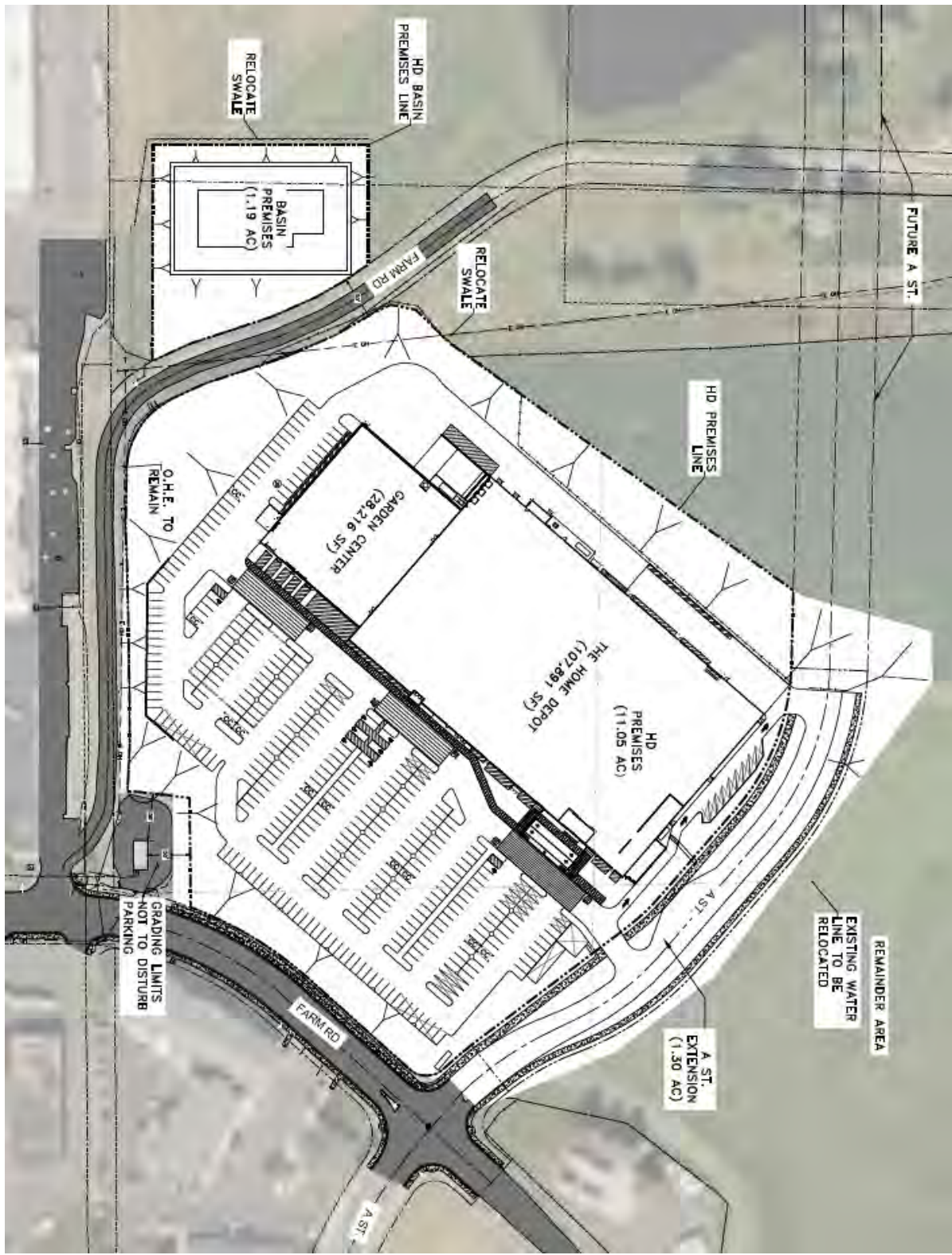


EXHIBIT "B"

**LEASE CONFIRMATION CERTIFICATE**

This LEASE CONFIRMATION CERTIFICATE is executed as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Landlord") and **HOME DEPOT U.S.A., INC.**, a Delaware corporation ("Tenant").

WITNESSETH:

WHEREAS, on \_\_\_\_\_, 200\_\_\_\_, Landlord and Tenant entered into that certain Ground Lease (the "Lease"), for the lease of \_\_\_\_\_ square feet/acres located in \_\_\_\_\_ [City], \_\_\_\_\_ County, \_\_\_\_\_ [State] and being more particularly described in the Lease. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Lease.

WHEREAS, pursuant to Section 3.1 of the Lease, the parties have agreed to execute a written statement (the "Lease Confirmation Certificate") setting forth, among other things, the Rent Commencement Date and expiration date of the Term and deadlines for delivery of notices to extend the Term; and

NOW, THEREFORE, Tenant and Landlord hereby state as follows:

- (a) Rent Commencement Date: \_\_\_\_\_  
 Expiration Date of First Lease Year: \_\_\_\_\_  
 Date of Expiration of Lease: \_\_\_\_\_

- (b) Pursuant to Section 4.1 of the Lease, the Rent is as follows:

**ARTICLE 22 - ANNUAL MONTHLY**

[Lease] Years	Rent Amount	Rent Amount
[Lease] Years __ - __ ( / / - / / )	\$0.00	\$0.00
[Lease] Years __ - __ ( / / - / / )	\$0.00	\$0.00
[Lease] Years __ - __ ( / / - / / )	\$0.00	\$0.00
[Lease] Years __ - __ ( / / - / / )	\$0.00	\$0.00
[Lease] Years __ - __ ( / / - / / )	\$0.00	\$0.00

**ARTICLE 23 - OPTION PERIOD [IF ELECTED]**

**ARTICLE 24 - ANNUAL MONTHLY**

[Lease] Years	Rent Amount	Rent Amount
[Lease] Years __ - __ ( / / - / / )	\$0.00	\$0.00
[Lease] Years __ - __ ( / / - / / )	\$0.00	\$0.00
[Lease] Years __ - __ ( / / - / / )	\$0.00	\$0.00
[Lease] Years __ - __ ( / / - / / )	\$0.00	\$0.00
[Lease] Years __ - __ ( / / - / / )	\$0.00	\$0.00

- (c) Pursuant to Section 9.1(a) of the Lease, the Option Term notice dates are as follows

Option Period:	Deadline for Delivery of Notice to Extend Term:
[Lease] Years __ - __ ( / / - / / )	_____
[Lease] Years __ - __ ( / / - / / )	_____
[Lease] Years __ - __ ( / / - / / )	_____

[Lease] Years __ - __ (___/___ - ___/___)	_____
[Lease] Years __ - __ (___/___ - ___/___)	_____

This Lease Confirmation Certificate is intended to determine the various dates and time periods referenced above based on the formulae and other substantive provisions contained in the Lease in light of the actual attendant facts and circumstances that have come to pass. In no event is this Lease Confirmation Certificate intended to modify any substantive provision of the Lease, and in the event of a conflict between the terms of the Lease and this Lease Confirmation Certificate, the terms of the Lease shall control.

This Lease Confirmation Certificate may be executed in several counterparts, each of which may be deemed an original, and all such counterparts together shall constitute one and the same Lease Confirmation Certificate.

IN WITNESS WHEREOF, the parties have executed this Lease Confirmation Certificate as of the date and year first above written.

**LANDLORD:**

THE UNIVERSITY OF IDAHO BOARD OF REGENTS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

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

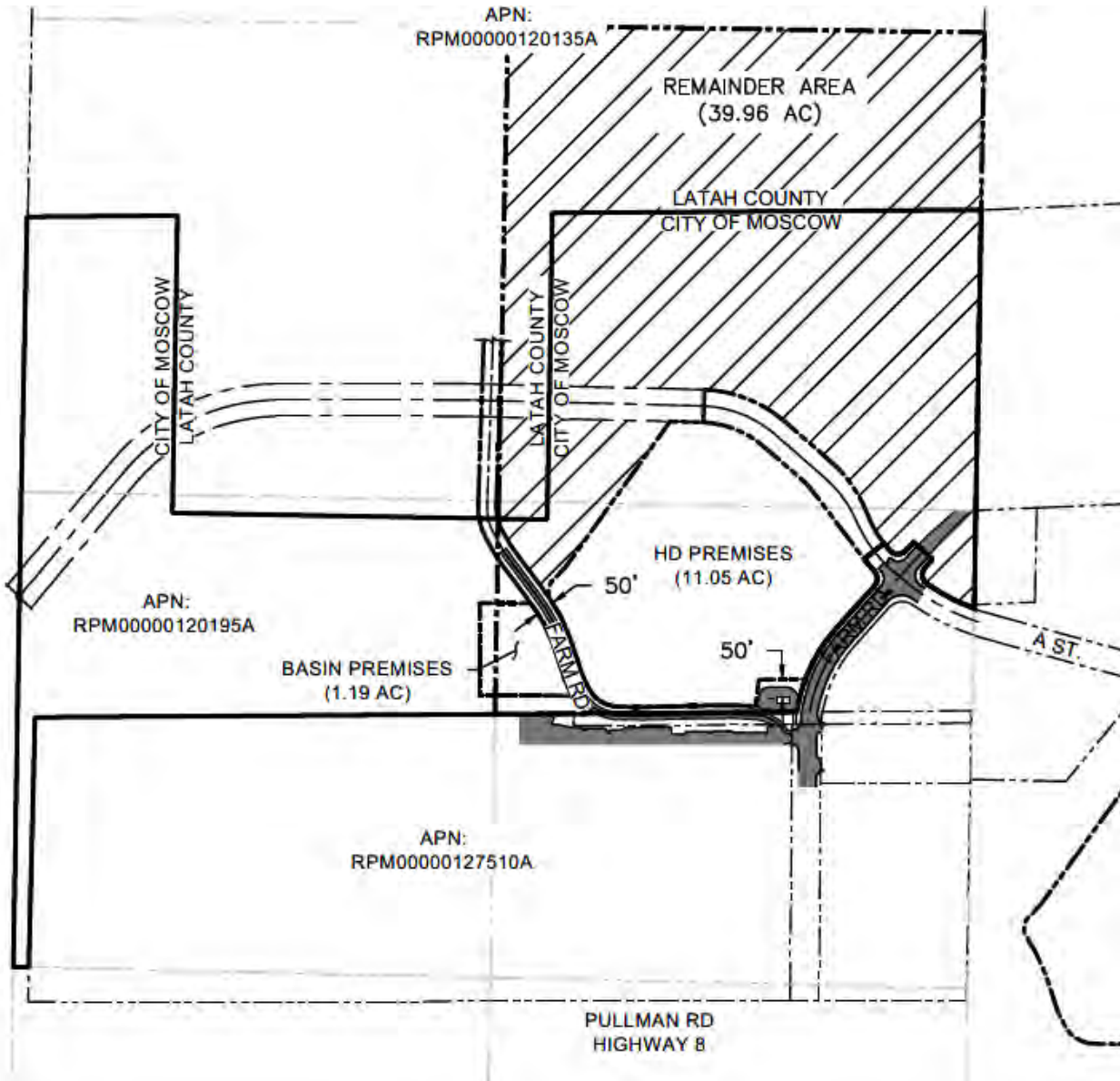
By: \_\_\_\_\_

Print Name: \_\_\_\_\_





Title: \_\_\_\_\_

EXHIBIT "C"


**DEPICTION OF  
ADJACENT CONTROLLED PROPERTY**



**LINE LEGEND:**

-  PROPOSED PROPERTY PREMISE
-  EXISTING PROPERTY LINE
-  SECTION LINE
-  SUBJECT PROPERTY

**HATCH LEGEND:**

-  ADJACENT CONTROLLED PROPERTY

DATE: 5.4.2023

**EXHIBIT "D"**

**PERMITTED EXCEPTIONS**

1. All taxes due and payable after the Possession Date.
2. Any facts, rights, interests or claims which are not shown by the public records by which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims, (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof, (c) water rights, claims or title to water whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Easement to Washington Water Power Company, as more fully set out under Instrument Nos. 254975 and 294042.
7. Easement to the City of Moscow, as more fully set out under Instrument Nos. 288289, 288291 and 486557.
8. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded as Instrument Nos. 305640 and 305641, 305642, 445435, 495476 and 538732, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 U.S.C. § 3604(c)

EXHIBIT "E"

**FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

RECORDING REQUESTED BY, AND )  
WHEN RECORDED RETURN TO: )  
)  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
Attention: \_\_\_\_\_)

(Space Above for Recorder's Use)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement"), made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_, having an office at \_\_\_\_\_, Attention: \_\_\_\_\_ ("Lender") and HOME DEPOT U.S.A., INC., a Delaware corporation, having an office at 2455 Paces Ferry Road, C-19, Atlanta, Georgia 30339, Attention: Property Management/Store No. \_\_\_\_\_ ("Tenant");

RECITALS

WHEREAS by a Ground Lease dated \_\_\_\_\_ (the "Lease"), \_\_\_\_\_ ("Landlord") has leased to Tenant and Tenant has leased from Landlord all of that certain property in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, more particularly described on **Exhibit A** (the "Premises"); and

WHEREAS Lender is the current holder of various instruments and documents including a **[CONFORM TO TRANSACTION: mortgage, deed to secure debt or of the beneficial interest in a deed of trust]** dated \_\_\_\_\_, \_\_\_\_\_, executed by Landlord securing an indebtedness in the original principal amount of \$\_\_\_\_\_, and recorded \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_, which constitute a lien against the Premises (collectively the "Mortgage"); and

WHEREAS, a copy of the Lease has been delivered to Lender, the receipt of which is hereby acknowledged; and

WHEREAS, the parties hereto desire to effect the subordination of the Lease to the Mortgage and to provide for the non-disturbance of Tenant by the holder of the Mortgage or any purchaser under a foreclosure or deed in lieu thereof;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and for and in consideration of their respective covenants herein made, the parties agree as follows:



1. Lender hereby consents to and approves the Lease and all of the terms and conditions thereof, including, without limitation, the options to extend the term of the Lease and the First Offer Right set forth therein.

2. Tenant covenants and agrees with Lender that the Lease, the leasehold estate created thereby, and all rights and privileges of Tenant thereunder are made and shall be subject and subordinate to the lien of the Mortgage and to all modifications, substitutions, consolidations, renewals and extensions thereof (and such subordination shall not lessen or diminish Tenant's rights under the Lease), subject, however, to the provisions of this Agreement.

3. Lender agrees that the possession of the Premises by Tenant and Tenant's rights under the Lease shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise affected by (i) any suit, action or proceeding by Lender under the Mortgage or the bond or note or other obligation secured thereby, or the foreclosure of the Mortgage by Lender or the enforcement of any rights under the Mortgage by Lender, or any deed given in lieu of foreclosure of the Mortgage, or (ii) any default under the Mortgage or the bond or note or other obligation secured thereby. Further, Lender agrees that Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for foreclosure or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby.

4. If Lender, or any future holder of the Mortgage shall become the owner of the Premises by reason of foreclosure of the Mortgage or otherwise, or if the Premises shall be sold as a result of any action or proceeding to foreclose the Mortgage, or transfer of ownership by deed given in lieu of foreclosure, then:

(a) the Lease shall continue in full force and effect as a direct lease and agreement between Tenant and Lender or the new owner of the Premises upon and subject to all of the terms, covenants and conditions contained therein;

(b) Tenant shall remain in possession of the Premises in accordance with the terms and conditions of the Lease;

(c) Tenant shall attorn to and accept Lender or the new owner of the Premises as "Landlord" under the Lease and be bound by and perform all the obligations imposed on Tenant by and in the Lease; and

(d) Lender or the new owner of the Premises shall be bound by all of the obligations imposed on "Landlord" by and in the Lease.

5. The terms of Articles X and XI of the Lease addressing casualty and condemnation shall control over any inconsistent provisions in the Mortgage.

6. Any notices or communications given under this Agreement shall be in writing and shall be deemed given on the earlier of actual receipt or three (3) days after deposit in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, at the respective addresses set forth above, or at such other address as the party entitled to notice may designate by written notice as provided herein.

7. This Agreement shall be governed by and construed in accordance with laws of the state in which the Premises are located.

8. This Agreement shall also bind and benefit the heirs, legal representatives, successors and assigns of the respective parties hereto, and all covenants, conditions and agreements herein contained shall be construed as running with the land. This Agreement is not intended to and shall not amend or modify the Lease. In the event of an inconsistency or conflict between the terms of this Agreement and the terms of the Lease or between the terms of the Mortgage and the terms of the Lease, the terms of the Lease shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

TENANT:

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LENDER:

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT "F"

**FORM OF MEMORANDUM OF LEASE**

RECORDING REQUESTED BY, AND )  
 WHEN RECORDED RETURN TO: )  
 )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 Attention: \_\_\_\_\_ )

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE is made and entered into effect as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ having an address of \_\_\_\_\_ ("**Landlord**") and **HOME DEPOT U.S.A., INC.**, a Delaware corporation, having an address of 2455 Paces Ferry Road, Atlanta, Georgia 30339 ("**Tenant**").

1. **TERM AND PREMISES.** For the initial term of \_\_\_\_\_ (\_\_) Lease Years (as such term is defined in the Lease) and upon the provisions set forth in that certain Ground Lease dated \_\_\_\_\_, 20\_\_ between Landlord and Tenant ("**Lease**"), all of which provisions are specifically made a part hereof as fully and completely as if set out in full herein, Landlord leases to Tenant and Tenant leases from Landlord those certain premises (the "**Premises**") described on **Exhibit "A"** hereto.
2. **OPTIONS TO EXTEND TERM.** Reference is particularly made to Article III of the Lease wherein Tenant is given the option to extend the term of the Lease on the terms and conditions set forth therein for \_\_\_\_ (\_\_) successive periods of \_\_\_\_ (\_\_) years each.
3. **RIGHT OF FIRST OFFER.** Reference is particularly made to Article 21 of the Lease wherein Landlord grants to Tenant the right of first offer to purchase the Premises on the terms and conditions as more fully described therein.
4. **PURPOSE OF MEMORANDUM OF LEASE.** This Memorandum of Lease is prepared for the purposes of recording a notification as to the existence of the Lease but in no way modifies the express and particular provisions of the Lease. In the event of a conflict between the terms of the Lease and the terms of this Memorandum of Lease, the terms of the Lease shall control.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute and deliver this Memorandum of Lease as of the day and year first above written.

**LANDLORD:**

THE UNIVERSITY OF IDAHO BOARD OF REGENTS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

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

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT "G"

FORM OF HOME DEPOT ESTOPPEL CERTIFICATE

TO:

RE: Ground Lease dated \_\_\_\_\_ ("Lease"), by and between \_\_\_\_\_ ("Landlord") and HOME DEPOT U.S.A., INC. a Delaware corporation ("Tenant") for the premises located at \_\_\_\_\_ as more fully described in the Lease (the "Premises").

The undersigned, as Tenant under the above referenced Lease, hereby certifies to the best of its actual knowledge, as of the date hereof, the following:

1. The undersigned has entered into occupancy of the Premises described in the Lease;
2. The Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way, except as follows: \_\_\_\_\_. A true and complete copy of the Lease is attached hereto as Exhibit A. A true and correct copy of the Lease Confirmation Certificate is attached hereto as Exhibit B.
3. No portion of the Premises has been sublet except as follows: \_\_\_\_\_.
4. Other than as set forth in the Lease and that certain Restriction Agreement recorded as Instrument No. \_\_\_\_\_ in the official records of Latah County, Idaho, there is no other agreement (except for the agreements contained herein) between Landlord and Tenant with respect to the Premises or its surrounding properties, except as follows: \_\_\_\_\_.
5. The Commencement Date of the Lease was \_\_\_\_\_;
6. The expiration date of the Lease is \_\_\_\_\_, however, Tenant has additional options to extend the term of the Lease as provided therein;
7. Current annual Base Rent is \$ \_\_\_\_\_; or, \$ \_\_\_\_\_ per month;
8. Tenant has certain exclusive rights with respect to the sale of certain goods and services as to any Controlled Adjacent Property as more fully set forth in the Lease.
9. All conditions of the Lease to be performed by Landlord and necessary to the enforceability of the Lease have been satisfied;
10. To the reasonable knowledge and belief of the undersigned, there are no defaults by either Landlord or Tenant thereunder, and no events which with the passage of time or otherwise will constitute a default, except as follows: \_\_\_\_\_;
11. No rents have been paid in advance of one (1) month; and
12. There are no existing defenses or offsets which the undersigned has against the Landlord.
13. The current address(es) for notices to Tenant under the Lease is/are:

This Estoppel Certificate is given solely for the information of the party to whom it is addressed and may not be relied upon by any other person or entity. Tenant acknowledges the person or entity to whom this Estoppel Certificate is addressed will rely on the same. This Estoppel Certificate shall not result in any modification of or amendment to the Lease.

**TENANT:**

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

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_