

## DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (this "Declaration") is made as of this 24<sup>th</sup> day of June, 2002, by and between HOME DEPOT U.S.A., INC., a Delaware corporation ("Home Depot"), and ALBERT UNREIN, VIRGINIA UNREIN, GEORGE STEPHEN UNREIN, DAVID WAYNE UNREIN AND DANIEL FRANK UNREIN (collectively "Unrein").

### RECITALS

A. Simultaneous with the recordation of this Declaration, Home Depot purchased that certain real property, legally described on Exhibit "A" attached hereto and incorporated herein by this reference, located in the City of Montrose, State of Colorado (the "Home Depot Property"), from Unrein.

B. Pursuant to Section 7, paragraph (a)(iv) of the Real Estate Purchase Agreement between the parties, a condition to the purchase by Home Depot of the Home Depot Property obligated Unrein to record a restriction upon that certain real property located adjacent to and west of the Home Depot Property consisting of approximately 17 acres which was retained by Unrein, legally described on Exhibit "B" attached hereto and incorporated herein by this reference (the "Unrein Property").

NOW, THEREFORE, Unrein hereby covenants and agrees as follows:

1. Home Improvement Restrictive Covenant. The Unrein Property shall not be used or permitted to be used for a home improvement center or for any business which sells, displays, leases or distributes the following items or materials, singly or in any combination: lumber, hardware, tools, plumbing supplies, pool supplies, electrical supplies, paint, wallpaper and other wallcoverings, 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), hard and soft flooring (including tile [including ceramic tile], wood flooring, rugs and carpeting), siding, ceiling fans, gardening and garden nursery supplies, artificial and natural plants, patio furniture and patio accessories, barbeques and barbeque accessories, indoor and outdoor lighting systems and light fixtures, cabinets and unfinished and finished furniture, kitchen and household appliances, closet organizing systems, pictures or picture framing, interior design services, or other products generally sold in a retail home improvement center, except for the incidental sale of such items. An "incidental sale of such items" is one in which there is no more than the lesser of (i) five percent (5%) of the total Floor Area of such business, or (ii) 1,000 square feet of sales and/or display area, relating to such items individually or in the aggregate.

2. Breach. In the event of a breach of any of the restrictions contained in this Declaration by Unrein, or their respective successors and assigns, Home Depot or its successors and assigns shall be entitled to take any action that may be available to it at law or in equity to enforce the payment of any actual and consequential damages or the specific performance of all obligations under this Declaration or injunctive relief.



3. Cumulative Remedies. Each remedy herein provided shall not be exclusive of any other remedy herein or now or hereafter existing by law, and may be exercised concurrently, independently or successively in any order whatsoever.

4. Attorneys' Fees. In the event Home Depot is forced to institute legal proceedings to enforce the terms of this Declaration, the prevailing party shall be awarded, in addition to any other relief to which it is entitled, its costs and expenses incurred in connection with such legal proceedings, including without limitation, reasonable costs and attorneys' fees (including its reasonable costs and attorney's fees on any appeal).

5. Successors and Assigns; Binding Effect. This Declaration and the restrictions created hereby shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns, and shall run with the Unrein Property in perpetuity.

6. Recording. This Declaration shall be recorded in the real estate records of the Clerk and Recorder of Montrose County, Colorado, upon the execution by the parties hereto.

7. Counterparts. This Declaration may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Declaration of Restrictive Covenant as of the day and year first above written.

UNREIN:

Albert Unrein  
Albert Unrein

Virginia Unrein  
Virginia Unrein

George Stephen Unrein  
George Stephen Unrein

David Wayne Unrein  
David Wayne Unrein

Daniel Frank Unrein  
Daniel Frank Unrein

by-  
George Stephen Unrein  
POA



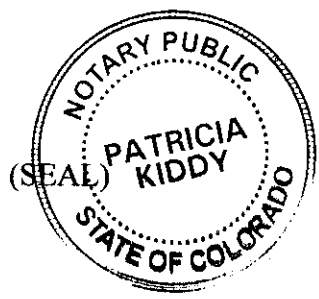
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STATE OF COLORADO )  
 )  
COUNTY OF MONTROSE )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of June, 2002, by Albert Unrein.

Witness my hand and official seal.

My commission expires: 7-30-2003



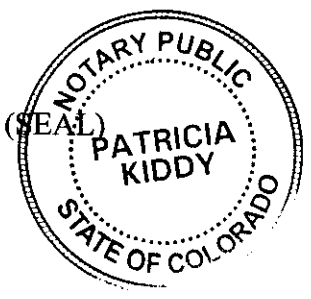
[Signature]  
Notary Public

STATE OF COLORADO )  
 )  
COUNTY OF MONTROSE )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of June, 2002, by Virginia Unrein.

Witness my hand and official seal.

My commission expires: 7-30-2004



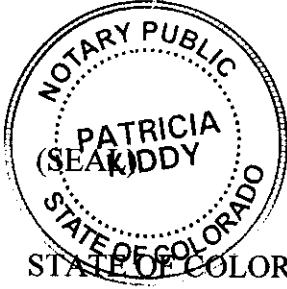
[Signature]  
Notary Public

STATE OF COLORADO )  
 )  
COUNTY OF MONTROSE )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of June, 2002, by George Stephen Unrein.

Witness my hand and official seal.

My commission expires: 7-30-2004



[Signature]  
Notary Public

STATE OF COLORADO )  
 )  
COUNTY OF MONTROSE )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of June, 2002, by David Wayne Unrein.

Witness my hand and official seal.

My commission expires: 7-30-2004



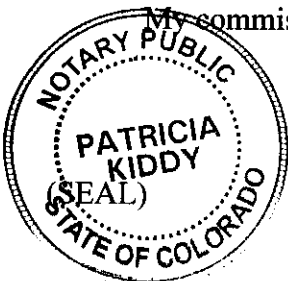
[Signature]  
Notary Public

STATE OF COLORADO )  
 )  
COUNTY OF MONTROSE )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of June, 2002, by Daniel Frank Unrein. Attorney by George Stephen Unrein as Power of

Witness my hand and official seal.

My commission expires: 7-30-2004



[Signature]  
Notary Public



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**EXHIBIT "A"**

**Legal Description of the Home Depot Property**

Lot 1, Unrein Subdivision Filing No. 1, according to the plat thereof recorded on 6-25-01, 2002 in Book      at Page     , Reception No. 689437 in the Office of the Clerk and Recorder of Montrose County, Colorado.

**EXHIBIT "B"**

**Legal Description of the Unrein Property**

A PARCEL OF LAND SITUATE IN GOVERNMENT LOT 12, SECTION 4, T.48N., R.9W., OF THE N.M.P.M. BEING A PART OF OUTLOT A, UNREIN SUBDIVISION FILING NO. 1 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 12 AS MONUMENTED BY A #6 REBAR WITH A 2" ALUMINUM CAP LS 27609; THENCE N00°13'01"W, ALONG THE WEST LINE OF SAID GOVERNMENT LOT 12, A DISTANCE OF 757.69 FEET; THENCE S89°47'25"E, PARALLEL TO THE SOUTH LINE OF SAID GOVERNMENT LOT 12, A DISTANCE OF 1079.57 FEET TO A POINT ON THE LINE COMMON TO SAID OUTLOT A AND LOT 1, SAID UNREIN SUBDIVISION FILING NO. 1; THENCE ALONG SAID COMMON LINE THE FOLLOWING TWO (2) COURSES: (1) S45°00'00"W A DISTANCE OF 50.19 FEET AND (2) S90°00'00"W A DISTANCE OF 75.00 FEET; THENCE S00°00'00"W, CONTINUING ALONG SAID COMMON LINE AND ALONG THE LINE COMMON TO SAID OUTLOT A AND THE PARCEL DEDICATED FOR STREET RIGHT-OF-WAY PER SAID UNREIN SUBDIVISION FILING NO. 1, A DISTANCE OF 721.77 FEET TO A POINT ON THE SOUTH LINE OF SAID GOVERNMENT LOT 12; THENCE N89°47'25"W, ALONG THE SOUTH LINE OF SAID GOVERNMENT LOT 12, A DISTANCE OF 966.21 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 736,463 SQUARE FEET (16.9069 ACRES).

THE BEARINGS USED IN THE ABOVE LEGAL DESCRIPTION ARE BASED UPON THE ASSUMPTION THAT THE WEST LINE OF GOVERNMENT LOT 12 BEARS N00°13'01"W AS REFERENCED ON THE PLAT OF UNREIN SUBDIVISION FILING NO. 1 AND BOUNDED ON THE SOUTH BY A #6 REBAR WITH A 2" ALUMINUM CAP LS 27609 AND ON THE NORTH BY A FOUND PIN AND ALUMINUM CAP LS 31155.

DATE PREPARED: JUNE 12, 2002

DATE OF LAST REVISION:

PREPARED BY: BRETT L. MILLER, PLS NO. 27609  
FOR AND ON BEHALF OF  
ENGINEERING SERVICE COMPANY  
1300 SOUTH POTOMAC STREET, SUITE 126  
AURORA, COLORADO 80012  
PHONE: 303-337-1393