

OFFER TO PURCHASE REAL ESTATE

Date: January ____, 2005

To: Town of Acton, a municipal corporation with a principal place of business at Town Offices, 472 Main Street, Acton, MA 01720 hereinafter call the "**Seller**" or "**Town**".

From: HOME DEPOT U.S.A., INC., a Delaware corporation having a mailing address of 15 Dan Road, Canton, Massachusetts 02021, Attn: John Tascione with a federal taxpayer ID number of 58-1853319 (hereinafter "**HD**") and DICKINSON DEVELOPEMNT CORP., a Massachusetts corporation having a mailing address of 1266 Furnace Brook Parkway, Quincy, Massachusetts 02169, Attn: Mark C. Dickinson with a federal taxpayer ID number of 04-269-3259 (hereinafter "**Dickinson**") (HD and Dickinson are collectively hereinafter referred to as the "**Buyer**"), their nominees or assigns.

The "**Property**" herein referred to is identified as follows: A certain parcel of land in Acton, Middlesex County, Massachusetts consisting of approximately 17.75 acres of land located off Route 2 shown as Lot 2 on a plan entitled "Acton Business Center Development Site Without Transfer Station, Conceptual Plan" prepared by the Acton Engineering Department, dated 10/4/04, scale 1"=60', attached hereto as Exhibit "A", subject to the Town's reserved easements for access, ramps, service roads, and drainage as shown on said plan and to be described with particularity in the Seller's Deed to the Buyer.

Special provisions (if any) re fixtures, appliances, etc.: No fixtures or appliances are included; the sale is land only.

Buyer hereby offers to buy said property, which has been offered for sale pursuant to a Request for Proposals dated November 1, 2004, issued by the Town pursuant to M.G.L.c.30B, § 16 (the "**RFP**").

Buyer offers to buy said property under the following terms and conditions (the "**Offer**"):

1. Buyer will pay therefore One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00), of which:
2.
 - (a) Twenty Five Thousand and No/100 Dollars (\$25,000.00) is paid herewith as a cash deposit to bind this Offer.
 - (b) Twenty Five Thousand and No/100 Dollars (\$25,000.00) is to be paid as an additional deposit upon the execution of the Purchase and Sale Agreement provided for below.
 - (c) One Million Four Hundred Fifty Thousand and No/100 Dollars (\$1,450,000.00) is to be paid at the time of delivery of the deed in cash, or by certified, cashier's treasurer's or bank check(s) or by wire transfer of good and collectible funds.

3. This Offer is good until 5:00 p.m. on the date that is fifteen (15) days after the last day of the Acton Annual Town Meeting of April 2005, at or before which time a copy hereof shall be signed by the Seller signifying acceptance of this Offer, and returned to Buyer forthwith, otherwise this Offer shall be considered as rejected and the money deposited herewith shall be returned to HD forthwith.
4. The parties hereto shall, on or before the date that is forty-five (45) days after Buyer's receipt of Seller's acceptance of this Offer, execute a Purchase and Sale Agreement in the form generally as attached to the RFP, but incorporating the Buyer's proposed changes which are attached hereto as **Exhibit "B"** and such other changes as may be agreed by the parties hereto and which, when executed, shall be the agreement between the parties hereto. The parties shall reasonably negotiate in good faith the final form of Purchase and Sale Agreement in order to incorporate such required changes prior to such date, failure of which shall be deemed a rejection by Seller of this Offer and the money deposited herewith shall be returned to HD forthwith.
5. A good and sufficient deed, conveying a good and clear record and marketable title shall be delivered at the time and place of "closing" set forth in the Purchase and Sale Agreement executed by the parties
6. If Buyer does not fulfill its obligations under this Offer, the above-mentioned deposit shall forthwith become Seller's property without recourse to either party. Said deposit shall be held by Fidelity National Land Title Insurance Company, National Title Services – Atlanta, Two Parkway Center, 1800 Parkway Place, Suite 700, Marietta, Georgia 30067 as escrow agent (the "Escrow Agent") subject to the terms hereof, provided however that in the event of any disagreement between the parties, the Escrow Agent may retain said deposit pending instructions mutually given by the parties. A similar provision shall be included in the Purchase and Sale Agreement with respect to any deposits held under its terms.
7. Time is of the essence hereof.
8. Upon completion of the landfill cap and closure improvements specified in the RFP and acceptance thereof by the Seller, the Buyer shall forthwith cause to be paid all materialmen and others who performed work with respect thereto, shall forthwith cause to be discharged all liens with respect thereto, and shall release and re-convey to the Seller (for consideration of one dollar and on the terms acceptable to the Board of Selectmen) all of the Seller's right, title and interest in Lot 3 as shown on the plan entitled "Acton Business Center Development Site Without Transfer Station, Conceptual Plan" prepared by the Acton Engineering Department, dated 10/4/04, scale 1"=60', attached hereto as **Exhibit "A"** hereto.
9. All notices, requests, demands or other communications hereunder shall be in writing and deemed given when delivered personally, when deposited to be sent via a nationally-recognized overnight courier keeping receipts of delivery, service prepaid or billed to sender, or on the day said communication is deposited in the U.S. mail, by registered or

certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Buyer: Dickinson Development Corp.
1266 Furnace Brook Parkway
Quincy, Massachusetts 02169
Attention: Mark C. Dickinson

With a copy to: Home Depot U.S.A., Inc.
15 Dan Road
Canton, Massachusetts 02021
Attention: John Tascione

With a copy to: Home Depot U.S.A., Inc.
2455 Paces Ferry Road, C-20
Atlanta, Georgia 30339-4024
Attention: Vice President - Real Estate Law Group
Site Selection No.: SS-00769

and to: Home Depot U.S.A., Inc.
15 Dan Road
Canton, Massachusetts 02021
Attention: Director – Legal

and to: Hartman, Simons, Spielman & Wood, LLP
6400 Powers Ferry Road, Suite 400
Atlanta, Georgia 30339
Attention: Robert A. Chubb, Esq.

If to Escrow Agent: Fidelity National Title Insurance Company
National Title Services - Atlanta
Two Parkway Center
1800 Parkway Place, Suite 700
Marietta, Georgia 30067
Attention: Linda Thurman

or to such other address as the parties may from time to time designate by notice in writing to the other parties. While notice given by courier service or mail shall be effective when deposited with the courier service or in the mails, properly addressed and postage paid or shipping charges paid or billed to the sender, all as aforesaid, the period in which a response to such a notice must be given or taken shall run from the date of receipt by the addressee. Rejection, refusal to accept delivery or inability to deliver due to changed address of which no notice has been given shall be deemed receipt by the addressee.

NOTICE: this is a legal document that creates binding obligations. If not understood, consult an attorney.

WITNESS our hands and seals.

BUYER:

HD:

Home Depot U.S.A., Inc., a Delaware corporation

DICKINSON:

Dickinson Development Corp., a Massachusetts corporation

By: _____
Cynthia L. Warren, Director – Legal

By: _____
Mark C. Dickinson, President

This Offer is hereby accepted upon the foregoing terms and conditions at ____ a.m./p.m. on _____, 2005.

WITNESS our hands and seals.

SELLER:

TOWN OF ACTON

By its Board of Selectmen

F. Dore Hunter, Chairman

Peter K. Ashton

Walter Foster

Robert Johnson, Clerk

William H. Schupert

EXHIBIT "A" TO OFFER TO PURCHASE REAL ESTATE

Plan entitled "Acton Business Center Development Site Without Transfer Station, Conceptual Plan" prepared by the Acton Engineering Department, dated 10/4/04, scale 1"=60'

EXHIBIT "B" TO OFFER TO PURCHASE REAL ESTATE

Buyer's Comments to the Purchase and Sale Agreement

Section 2 – Form of deed to be customary for commercial transactions in the location of the Property conveying good and clear record and marketable title subject only to (i) existing building and zoning laws and (ii) any easements, covenants or conditions of record not objected to by Buyer (see next paragraph). The form of such deed to be reasonably approved by Buyer during the Inspection Period (see comment to Section 25 below). Further, title to be conveyed by such deed must be insurable at standard or customary premium rates by Buyer's selected title company (obtained at Buyer's cost).

Section 2 – Delete waiver of existing title and provide that Buyer shall have until the expiration of the Inspection Period (see comment to Section 25 below) to examine title to the Property and notify Seller of any objectionable matter or defect that affects the marketability or insurability of the title to the Property or that adversely affects the use of the Property by Buyer. Seller shall use reasonable efforts to cure any such title objection, but is not required to spend more than \$1,000 as to non-monetary encumbrances or \$50,000 as to monetary encumbrances (i.e., liens or mortgages).

Section 5 – Closing should occur 30 days after the issuance of all necessary permits and approvals on a final, unappealable basis, but not later than 30 days after the expiration of an Approval Period (see comment to Section 25 below). Further, Closing can occur through an appropriate escrow arrangement between Buyer, Seller and Buyer's title company/escrow agent.

Section 5 – Need to add a default provision providing that (i) if Seller defaults and fails to close, then Buyer shall get all deposits paid refunded and may pursue specific performance or other legal or equitable remedies and (ii) if Buyer defaults and fails to close, then Seller may keep all deposits paid as final liquidated damages without further recourse to Buyer.

Section 6 – Delete waiver of existing zoning and building violations and provide that Buyer shall have until the expiration of the Inspection Period (see comment to Section 25 below) to examine any zoning and building violations and notify Seller of any objectionable matter regarding same.

Section 6 – Seller shall be obligated to spend up to \$50,000 to clear existing zoning and building violations (not \$1,000 stated).

Section 7 – Seller shall use reasonable efforts to cure any title objection, but is not required to spend more than \$1,000 as to non-monetary encumbrances or \$50,000 as to monetary encumbrances (i.e., liens or mortgages).

Section 15 – Seller shall use reasonable good faith efforts to have this Agreement approved at the April 2005 Acton Annual Town Meeting. Further, if necessary, Seller will call a special town meeting to address the same. If Seller is unable to have this Agreement approved by the expiration of the Inspection Period (see comment to Section 25 below), then this Buyer can

terminate and receive a refund of all deposits paid at any time prior to the approval of this Agreement at a Town Meeting. Further, upon such approval, Seller shall covenant that it has full authority to enter into this Agreement and perform the obligations herein.

Section 17 – The broker representation and indemnity should be made reciprocal.

Section 21 – notice may be delivered by overnight courier service such as UPS or Federal Express and deemed given when deposited with the courier. If a due date lands on a Saturday, Sunday or legal holiday, it shall roll to the next business day.

Section 22 – Should reflect the deposit and purchase price schedule set forth in the Offer. All deposits to be held in escrow by the escrow agent identified in the Offer. Further, it should be clear that all deposits made to escrow agent under the Offer and with the execution of the Purchase and Sale Agreement shall be applicable to and credited against the Purchase Price at Closing.

Section 25 – Buyer has not been given ample opportunity to inspect the premises. As such, Buyer requires a customary 90 day Inspection Period to review the condition and suitability of the Property. If Buyer determines in its sole judgment that the Property is not suitable for its intended use (including material increases to anticipated construction costs due to the physical condition of the property), then Buyer may terminate the Agreement and receive a refund of all deposits previously made.

Section 25 – Buyer needs ample time to obtain all permit and approvals for its intended development (as well as required cap and closure work hereunder). As such, Buyer requires a 36 month Approval Period (from the expiration of the Inspection Period) within which to obtain all necessary permits and approvals (the "Approvals") for its intended development on a valid, irrevocable, unqualified and unconditioned (except for such qualifications and/or conditions that are acceptable to Buyer in its sole and absolute discretion), and are no longer subject to appeal or litigation. If Buyer has not obtained all Approvals by the expiration of the Approval Period, then Buyer may extend the Approval Period for an additional 6 months upon the deposit of an additional \$25,000 in escrow with the escrow agent. Seller agrees at all times to cooperate fully with Buyer's efforts to obtain such Approvals. Buyer shall use reasonable good faith efforts after the expiration of the Inspection Period to obtain such Approvals. If such Approvals are not obtained prior to the expiration of the Approval Period (as the same may have been extended), Buyer may terminate this Agreement and obtain a refund of 50% of its deposits to the extent any missing Approval is one to have been issued by a governmental entity other than the Town and 100% of its deposits to the extent any missing Approval is one to have been issued by the Town (including, without limitation, rezoning). Such Approvals shall include (without limitation) all permits, licenses, variances and approvals, whether ministerial, discretionary or otherwise, from governmental and quasi-governmental authorities that are necessary for the construction and operation of the Buyer's intended development of the Property, including, without limitation, any such permits, licenses, variances and approvals pertaining to demolition of any existing improvements, site plan approvals, land use amendments, engineering permits, traffic and department of transportation permits (including, without limitation, receipt of any and all permits and approvals necessary to permit "full-in" and "full-out" vehicular ingress and egress to and

from the Buyer's intended development of the Property), sewer and storm water management permits, off-site permits, parking variances, any required comprehensive land plan amendments, any amendments to or approvals required under any applicable development of regional impact plan, vested development rights, satisfaction of all concurrency requirements and any other permits, licenses, variances and approvals otherwise pertaining to buildings, occupancy, signs, driveways (including ingress and egress to public thoroughfares), wetlands, endangered species and environmental controls. Further, Seller agrees at all times to cooperate fully with Buyer's efforts to obtain such Approvals. Buyer shall use reasonable good faith efforts after the expiration of the Inspection Period to obtain such Approvals. If such Approvals are not obtained prior to the expiration of the Approval Period, Buyer may terminate this Agreement and obtain a refund of 50% of its deposits to the extent any missing Approval is one to have been issued by a governmental entity other than the Town and 100% of its deposits to the extent any missing Approval is one to have been issued by the Town (including, without limitation, rezoning).

Section 25 – Seller shall use reasonable good faith efforts to have the Property rezoned to permit commercial/retail use at the April 2005 Acton Annual Town Meeting. If unable to get on the April 2005 agenda, then Seller will call a special town meeting to address the same at a reasonable time thereafter. If Seller is unable to have the Property rezoned by the expiration of the Approval Period (see comment to Section 25 above), then Buyer can terminate and receive a refund of all deposits paid.

Section 28 – Any indemnity from Buyer to Seller shall be limited to acts of Buyer in closing and capping the landfill, including any liability under, violation of or noncompliance with environmental laws by Buyer related thereto (except to the extent such liability, violation or noncompliance relates to any contamination occurring prior to closing). Further, Seller shall release and not hold Buyer liable for (i) any contamination occurring prior to closing (including damage to person or property related thereto) and (ii) any liability under, violation of or noncompliance with environmental laws by Seller in the ownership of the Property or operation of the landfill.

Section 28 – Further, Buyer will obtain an environmental liability policy for a 10 year term of not less than \$5,000,000 in the aggregate naming the Seller as an "additional insured" thereunder.

[End of Comments]