

**PAYMENT IN LIEU OF TAXES AGREEMENT**

**THIS PAYMENT IN LIEU OF TAXES AGREEMENT** (this “Agreement”), made as of November 1, 2020, by and among **HOME DEPOT U.S.A., INC.**, a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of New York, having an office at 2455 Paces Ferry Road N.W., Atlanta, GA 30339-4024 (the “Company” or the “Obligor”) and the **NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at One West Street, Mineola, NY 11501 (the “Agency”). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Sublease Agreement (as hereinafter defined).

W I T N E S S E T H

**WHEREAS**, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”), and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

**WHEREAS**, the Obligor on behalf of themselves and entities formed or to be formed on their behalf, (together with the Obligor, the “Applicant”), has presented an application for financial assistance (the “Application”) to the Agency, which Application requests that the Agency consider undertaking a project (the “Project”) consisting of the following: (A)(1) the acquisition of an interest in an approximately 9.04 acre parcel of land located at 344 Duffy Avenue, Hamlet of Hicksville, Town of Oyster Bay, Nassau County, New York (Section: 11; Block: 327; Lot: 423) (the “Land”), (2) the renovation of an approximately 195,610 square foot building (collectively, the “Building”) on the Land, together with related improvements to the Land, including surface parking spaces and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the “Equipment”) necessary for the completion thereof (collectively, the “Project Facility”), all of the foregoing for use by the Applicant as a distribution center; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the “Financial Assistance”); and (C)

the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

**WHEREAS**, LEG ACQUISITION LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of New York, having an office at One Meadow Lands Plaza, East Rutherford, NJ 07073 (the “Overlandlord”) is the landlord under an lease agreement ,dated as of January 31, 2020 (as amended, the “Overlease”) between the Overlandlord, as landlord and the Company, as tenant, pursuant to which the Company leases the Land and the Building from the Overlandlord; and

**WHEREAS**, the Agency is or will be the holder of a leasehold interest in the Project Facility pursuant to a Company Lease Agreement, dated the Closing Date (the "Company Lease"), between the Company and the Agency; and

**WHEREAS**, the Agency proposes to undertake the Project as an authorized project under the Act and to sublease its interest in the Project Facility to the Company pursuant to a Sublease Agreement of even date herewith between the Agency and the Company (as amended, modified, supplemented or restated from time to time, the “Sublease Agreement”); and

**WHEREAS**, the payment and performance of the Obligor’s obligations under this Agreement shall be secured by a Mortgage and Assignment of Leases and Rents of even date herewith (as amended, modified, supplemented or restated from time to time, the “PILOT Mortgage”) from the Obligor and the Agency, as mortgagor, to the County of Nassau (the “PILOT Mortgagee”), its successors and assigns, as mortgagee, pursuant to which the Agency and the Obligor grant a first mortgage lien on the Project Facility to the PILOT Mortgagee; and

**WHEREAS**, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York (the “RPTL”), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control;

**NOW, THEREFORE**, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, the Obligor and the Agency covenant and mutually agree as follows:

Section 1. Tax-Exempt Status of Facility.

A. Application.

(1) The Obligor shall complete, and the Agency shall file, an application for tax exemption pursuant to Section 412-a of the RPTL (the “Application”). The Application shall be filed with the assessor for each of the various taxing entities having jurisdiction over the Project Facility, including, without limitation, the County of Nassau (the “County”) and each city, town, village and school district within which the Project Facility is located (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the “Taxing Entities” and each individually as a “Taxing Entity”). The Project Facility shall not be entitled to exempt status on the tax rolls of any Taxing Entity until the beginning of the first fiscal tax year of such Taxing Entity following the first taxable status date of such Taxing

Entity occurring subsequent to the last to occur of (i) the Agency becoming the holder of a leasehold interest in the Project Facility, (ii) the filing by the Agency of the appropriate Application for tax exemption, and (iii) the acceptance of such Application by the appropriate tax assessor(s) (such date, the “PILOT Commencement Date”).

(2) The Obligor hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Obligor, arising from any denial of an exemption from real property taxes and assessments, except to the extent that such denial results solely from the willful failure of the Agency, after demand by the Obligor, to file the completed Application for tax exemption as set forth in this Agreement.

B. Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law of the State of New York and Section 412-a of the RPTL may not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Sublease Agreement and the other Transaction Documents, the Obligor will be required to pay all special assessments and special ad valorem levies levied and/or assessed against or with respect to the Project Facility, subject to Section 2(B)(3) hereof.

C. Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Obligor or the Agency on the Project Facility or the rental paid pursuant to the Sublease Agreement or the occupancy of or any interest of the Obligor or the Agency in the Project Facility or any part thereof or any personal property used in connection with the business conducted and located therein, the amount of any such taxes, assessments or charges shall be paid by the Obligor as and when due. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid as and when due directly by the Obligor and shall not be credited against nor be affected in any manner by any payment in lieu of real property taxes and assessments in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

## Section 2. Payments.

A. Tax Payments. Prior to the PILOT Commencement Date, the applicable real property taxes and assessments levied and/or assessed against or with respect to the Project Facility shall be payable in full by the Obligor to the applicable Taxing Entity as if the Agency were not the holder of a leasehold interest in the Project Facility or otherwise involved in the Project.

### B. PILOT Payments.

(1) From the PILOT Commencement Date through and including the last day of the fifteenth (15th) fiscal tax year thereafter (such date, the “Abatement Expiration Date” and such period, the “Term”), the Obligor shall make payments in lieu of real property taxes and assessments levied and/or assessed by the Taxing Entities against the Project Facility as set forth on Schedule B hereto, subject to the provisions of Section 2(B)(3) hereof. In the

event of Non-Extension, as that term is defined in the Sublease Agreement, the PILOT will terminate on the last day on the tenth (10<sup>th</sup>) fiscal tax year after the PILOT Commencement Date.

The payments in lieu of real property taxes and assessments levied and/or assessed by the Taxing Entities against the Project Facility pursuant to clause (1) above are referred to herein as the “PILOT Payments.”

(2) From and after the Abatement Expiration Date, and until the Agency’s interest in the Project Facility is conveyed to the Obligor pursuant to the terms of the Sublease Agreement and the Project Facility has been returned to the tax rolls as fully taxable property, the Obligor shall make PILOT Payments equal to one hundred percent (100%) of the amount of real property taxes and assessments that would have been levied and/or assessed against or with respect to the Project Facility as if the Project Facility were owned by the Obligor and the Agency were not otherwise involved in the Project.

“PILOT Obligations” shall mean all amounts required to be paid by the Obligor under this Agreement, including, without limitation, those amounts set forth in Sections 2(A) and 2(B) hereof.

(3) Any provision of this Agreement to the contrary notwithstanding, the amount of PILOT Payments set forth in Section 2(B)(1) hereof for each fiscal tax year from the PILOT Commencement Date through the Abatement Expiration Date, shall be reduced (but not below \$0) by the amount, if any, of special assessments and special ad valorem levies assessed against or levied upon the Project Facility for such fiscal tax year (collectively, “Special Assessments”), whether by the Nassau County Tax Assessor’s Office or otherwise, which Special Assessments would otherwise be payable by the Obligor pursuant to this Agreement. The amount of any such reduction of a PILOT Payment shall be set forth on the applicable PILOT bill issued with respect to such fiscal tax year, if any, but the failure of the Obligor to receive such bill shall in no event affect the Obligor’s obligation to pay such PILOT Payment. In the event that (i) the amount of Special Assessments for a particular fiscal tax year exceeds the amount of the PILOT Payment for such fiscal tax year (such excess is hereinafter referred to as an “SA Credit”), or (ii) the amount of PILOT Payments for a particular fiscal tax year are not reduced by the amount of Special Assessments for such fiscal tax year (the amount of such Special Assessments is hereinafter referred to as an “SA Reduction”), then the amount of such SA Credit or SA Reduction, as the case may be, shall be carried over as a credit for the following fiscal tax year(s); provided, however, that if there is an unused SA Credit at the end of the Term of this Agreement, then the Obligor shall not be entitled to (a) take such SA Credit against any further payments hereunder or against real property taxes assessed against the Project Facility, or (b) an extension of the Term of this Agreement.

C. Payments.

(1) Amounts due and payable under this Agreement shall be payable to the Treasurer of the County of Nassau (the “Treasurer”), One West Street, 1st Floor, Mineola, NY 11501, or at such other address as the Treasurer may notify the Obligor of in writing.

(2) All PILOT Payments hereunder shall be allocated among the affected tax jurisdictions in proportion to the amount of real property and other taxes and assessments that would have been received by each Taxing Entity had the Project not been tax exempt due to the status of the Agency. This provision constitutes the formula for the calculation of the amounts of the PILOT Payments for each Taxing Entity as required by Section 859-a(6) of the General Municipal Law.

D. Due Dates; Interest; and Penalties.

(1) The Obligor may be billed for PILOT Payments as if the Project Facility were on the tax rolls at the time when taxes for each Taxing Entity are due.

(2) If any payment required under this Agreement is not made on or before the due date thereof, such payment shall be delinquent and the unpaid amount(s) shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Entities and as further provided in the General Municipal Law, including Section 874(5) thereof, which currently provides for a late charge equal to the greater of (a) five (5%) percent of the unpaid amount for the first month, and for each month, or part thereof, that the payment is delinquent beyond the first month, an additional late charge equal to one (1%) percent per month of the total amount payable; and (b) the late charge applicable from time to time to real property tax levies and assessments that are not paid when due. The Obligor agrees to pay all such late charges, interest and penalties when due.

(3) Anything contained in this subparagraph to the contrary notwithstanding, the Obligor shall have the obligation to make all payments of PILOT Obligations (other than payments of penalties, if any), in (a) two equal semi-annual installments on or prior to the date which is five (5) Business Days prior to January 1 and July 1 for the General Tax portion of the PILOT Obligations, (b) two equal semi-annual installments on or prior to the date which is five (5) Business Days prior to October 1 and May 1 for the School Tax portion of the PILOT Obligations, and (c) one semi-annual installment on or prior to the date which is five (5) Business Days prior to July 1 for the Village Tax portion of the PILOT Obligations, as applicable, of each year of the term of the Sublease Agreement or on such other due dates as may be established by the Agency or the Treasurer from time to time during the term of the Sublease Agreement.

E. Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the Term of this Agreement, in the event that the Agency's interest in the Project Facility, or any portion thereof or interest therein, is sold, transferred, assigned or otherwise disposed of by the Agency in accordance with the Sublease Agreement, the transferees thereof will thereafter pay the real property taxes and assessments on such Land and the Building and any Additional Facilities (as hereinafter defined) located on the Land, or on such portion of the Land, that was sold, transferred, assigned or otherwise disposed of, as may be required by applicable law.

F. Sale; Obligor's Obligation. In the event that the Agency sells, transfers, assigns or otherwise disposes of its interest in the Project Facility to any party other than the Obligor, the Obligor's obligation for PILOT Obligations shall be prorated to the date of the

closing of the transaction and thereupon all obligations of the Obligor for payment of PILOT Obligations shall cease, but the Agency shall take such steps with the transferee or assignee other than the Obligor to assure that each of the Taxing Entities shall suffer no loss of revenue until the Project Facility can be placed back on the tax rolls as fully taxable real property and taxes levied and billed therefor.

Section 3. Effective Date: Duration of Agreement. This Agreement shall become effective upon the execution and delivery of the Sublease Agreement by the Company and the Agency and this Agreement by the Obligor and the Agency and the execution and delivery of the Company Lease from the Company to the Agency and shall continue in effect until the earlier of (i) the termination of this Agreement pursuant to the terms of the Sublease Agreement or of this Agreement, or (ii) the date on which the Company Lease and the Sublease Agreement are terminated pursuant to the Sublease Agreement or this Agreement and the Project Facility has been placed back on the tax rolls as taxable property.

Section 4. Events of Default. The following shall constitute an “Event of Default” under this Agreement:

A. Failure by the Obligor to make any payment specified herein and the continuance of such failure for a period of fifteen (15) days after receipt by the Obligor of written notice from the Agency, the County and/or any Taxing Entity.

B. Failure by the Obligor to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days after receipt by the Obligor of written notice thereof from the Agency or, if such default is capable of being cured but cannot be cured within such thirty (30) day period, the failure of the Obligor to commence to cure such default within such thirty (30) day period or to prosecute such cure to completion, provided in no event shall such additional cure period exceed sixty (60) days without consent of the Agency.

C. The occurrence of an Event of Default under the Uniform Project Agreement, Company Lease, the Sublease Agreement or any other agreement between the Agency and the Company.

If the Obligor fails to make any payments pursuant to this Agreement when due, the amount or amounts so in default shall continue as an obligation of the Obligor until fully paid.

Upon the occurrence and during the continuance of an Event of Default hereunder, the Obligor shall be required to make PILOT Payments as if the Project Facility were owned by the Obligor and the Agency was not otherwise involved in the Project, such amounts to commence to be paid for the period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the Taxing Entities in which the Project Facility is located.

Upon the occurrence and continuance of an Event of Default hereunder, (i) the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments of PILOT Obligations in default from the Obligor, together with all the costs and

expenses of the Agency, its successors or assigns, paid or incurred in such recovery (including court costs and attorneys' fees and expenses) and interest at the rate charged by the respective Taxing Entities on overdue payments of taxes, and (ii) the Agency shall have the right to terminate the Company Lease and the Sublease Agreement at any time, and the Obligor shall accept such termination and any tender of reconveyance from the Agency of its interest in the Project Facility.

The Agency, in enforcing payment by the Obligor of the PILOT Obligations, may take whatever action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every Event of Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. Further, no payment by the Agency or receipt by the Agency or a Taxing Entity of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency and/or any Taxing Entity may accept any check or payment as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity.

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not the Obligor makes such payments. The Obligor hereby agrees to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its officers, members, agents (other than the Obligor), attorneys, servants and employees, past, present and future, against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

The Agency and the Obligor hereby acknowledge the right of the County, as beneficiary of this Agreement (on behalf of itself and all other Taxing Entities), to pursue any appropriate remedies, including an action or proceeding in the courts, to recover directly from the Obligor any payments of PILOT Obligations in default hereunder and/or to exercise its rights and remedies under the PILOT Mortgage. The Obligor shall promptly notify the Agency of any action or proceeding brought, or other measure taken, by a Taxing Entity to recover such payments in default hereunder. It is understood that the right of any Taxing Entity herein acknowledged is in addition to, and shall not impair, the Agency's own rights arising from a breach of this Agreement.

In the event that any interest in and to the Project Facility is conveyed by the Obligor or title to the Project Facility is conveyed by the Obligor to any other party prior to expiration of the term of the Sublease Agreement (other than transfers expressly permitted under the Sublease Agreement or otherwise consented to by the Agency), this Agreement shall, at the

option of the Agency, become null and void and any remaining tax abatement hereunder shall be canceled.

The rights, powers and remedies of the Agency and the County under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which the Agency or the County may have against the Obligor pursuant to this Agreement or the other Transaction Documents, or existing at law or in equity or otherwise. The respective rights, powers and remedies of the Agency and the County hereunder may be pursued singly, concurrently or otherwise, at such time and in such order as the Agency or the County may determine in its sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Event of Default with respect to the Obligor shall not be construed to be a waiver of any subsequent Event of Default by the Obligor or to impair any remedy, right or power consequent thereon.

Section 5. Additional Facilities. If any structural additions or change in use shall be made to the buildings or other improvements included in the Project Facility subsequent to the date hereof (other than the initial construction of the Building contemplated by the Project), or if any additional buildings or improvements shall be constructed on the Land other than the Building (such change of use, new structures, structural additions, buildings and improvements being referred to hereinafter as “Additional Facilities”), the Obligor agrees that its PILOT Obligations hereunder shall be increased by an amount, as determined by the Agency or a tax assessor selected by the Agency, equal to the increased tax payments, if any, that would have been payable on such increase if this Agreement were not in effect. Nothing herein shall constitute the Agency’s consent to the construction of any such additions or additional buildings or improvements or to such change of use.

Section 6. Change of Law. In the event the Project Facility, or any part thereof, is declared to be subject to taxation for real property taxes or assessments by an amendment to the Act, other legislative change or a final judgment of a court of competent jurisdiction, the obligations of the Obligor hereunder shall, to such extent, be null and void. If the Obligor has already paid any amounts under this Agreement for any period that the Obligor is required to pay taxes or assessments because of such amendment, legislative or final judgment (collectively, “Prior Payments”), then the Obligor shall look to the Taxing Authorities for repayment of the Prior Payments or a credit in the amount of the Prior Payments against taxes payable to the relevant Taxing Entity but in no event shall the Obligor look to the Agency for a refund of the Prior Payments.

Section 7. Waiver of Tax Exemption. The Obligor, in recognition of the benefits provided under this Agreement, and for so long as the Sublease Agreement is in effect, hereby expressly waives any rights it may have for any exemption under Section 485-b of the RPTL or any other exemption under any other law or regulation (except, however, for the exemption provided under Article 18-A of the General Municipal Law) with respect to the Project Facility.



The Obligor, in recognition of the benefits provided under this Agreement and the Sublease Agreement, hereby expressly waives the right to institute judicial or other review of an assessment of the real property with respect to the Project Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time, with respect to any fiscal tax year from and after the PILOT Commencement Date. Notwithstanding the foregoing, during the final three (3) years of the term of this Agreement, the Obligor shall have the right to institute judicial or other review of the assessed value of the real property with respect to the Project Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time; provided, however, that no such judicial or other review or settlement thereof shall have any effect on the Obligor's obligations under this Agreement, including, without limitation, the Obligor's obligation to make the PILOT Payments when due. Such judicial or other review shall only be for purposes of setting the assessed value of the Project Facility as though the Project Facility was on the tax rolls of each Taxing Entity as taxable real property but shall have no effect on this Agreement or the tax-exempt status of the Project Facility during the term of this Agreement.

In addition, the Obligor hereby represents and warrants that it has stipulated to the discontinuance (with prejudice) of all pending tax certiorari proceedings, if any, with respect to the Project Facility on or before the date hereof.

Section 8. Delivery of PILOT Statement. The Obligor shall deliver to the Comptroller of the County of Nassau, on or before the dates set forth for payment of the PILOT Obligations in Section 2 hereof, in each year during the term of the Sublease Agreement, a verified statement setting forth the amount of such payments and the dates of such payments.

Section 9. Limited Obligation. The obligations, covenants and agreements of the Agency hereunder shall not constitute or give rise to an obligation of the State of New York, the County, or any city, town, village or school district within which the Project Facility is located and neither the State of New York, the County, nor any such city, town, village or school district shall be liable thereon, and further, such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency.

Section 10. No Waiver. Failure by the Agency in any instance to insist upon the strict performance of any one or more of the obligations of the Obligor under this Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Agency of any of the Obligor's defaults or breaches hereunder or of any of the rights and remedies of the Agency by reason of such defaults or breaches, or a waiver or relinquishment of any and all of the Obligor's obligations hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Obligor or receipt by the Agency of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency may accept any check or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity.

Section 11. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given on the earlier of (1) three (3) Business Days after being sent to the applicable address stated below by registered or certified mail, return receipt requested, or two (2) Business Days after being sent by nationally recognized overnight courier service, or (2) the date on which delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

B. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

To the Agency:

Nassau County Industrial Development Agency  
One West Street  
Mineola, NY 11501  
Attention: Chief Executive Officer

With a copy to:

Harris Beach PLLC  
333 Earle Ovington Blvd, Suite 901  
Uniondale, NY 11553  
Attn: Andrew Komaromi, Esq.

To the Obligor:

HOME DEPOT U.S.A., INC.  
2455 Paces Ferry Road N.W.  
Atlanta, GA 30339-4024  
Attn: Property Management, C-19

With a copy to:

HOME DEPOT U.S.A., INC.  
2455 Paces Ferry Road N.W.  
Atlanta, GA 30339-4024  
Attention: Real Estate Legal, C-20

and to:

Seyfarth Shaw LLP  
1075 Peachtree Street, N.E., Suite 2500  
Atlanta, GA 30309  
Michelle L. Barnett, Esq.

Section 12. Change of Address. The Agency or the Obligor may, by notice given hereunder to each other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

Section 13. Assignment of Agreement. This Agreement shall be binding upon the successors and permitted assigns of the Obligor but no assignment shall be effective to relieve the Obligor of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency. The rights and obligations of the Obligor hereunder may not be assigned except in connection with a permitted assignment of the Obligor's interest in and to the Sublease Agreement. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto, the County and the other Taxing Entities.

Section 14. Independent Agreement. Notwithstanding any other provision of this Agreement, including the recitals hereof, the parties agree that the Sublease Agreement executed between the parties thereto shall be a separate and independent document from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Sublease Agreement shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Sublease Agreement are the only considerations and terms for which the parties thereto have executed this Agreement.

Section 15. Invalidity. If any one or more phrases, sentences, clauses or provisions of this Agreement or the entirety hereof shall be declared invalid or unenforceable by any order, decree or judgment of any court of competent jurisdiction, then such phrase, sentence, clause or provision or the entirety of this Agreement shall be deemed to be reformed in such manner as shall be determined by such court, or in the absence of such a determination then in the reasonable judgment of the Agency, to render such phrase, sentence, clause or provision of this Agreement valid and enforceable under applicable law. The parties hereto agree to enter into such documents, agreements and instruments as the Agency reasonably determines are necessary to effect any such reformation. In the event that any one more of the phrases, sentences, clauses or provisions of this Agreement cannot be reformed to comply with applicable law, then this Agreement shall be construed as if such phrase, sentence, clause or paragraph had not appeared in this Agreement.

Section 16. Amendments. This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency and the Obligor.

Section 17. Prior Agreements. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof.

Section 18. Delivery of Agreement. The Agency covenants to use reasonable efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution.

Section 19. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 20. Service of Process; Consent to Jurisdiction; Forum.

A. The Obligor represents that it is subject to service of process in the State of New York and covenants that it will remain so subject so long as the Sublease Agreement shall be in effect. If for any reason the Obligor should cease to be so subject to service of process in the State of New York, the Obligor hereby designates and appoints, without power of revocation, Seyfarth Shaw LLP, 620 Eighth Avenue, 32nd Floor, New York, NY 10018-1405, Attn: Michelle L. Barnett, Esq., as agent for service of process, and if such agent shall cease to act or otherwise cease to be subject to service of process in the State of New York, the Secretary of State of the State of New York, as the agents of the Obligor upon whom may be served all process, pleadings, notices or other papers which may be served upon the Obligor as a result of any of its obligations under this Agreement; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to the Obligor's obligations hereunder.

B. The Obligor irrevocably and unconditionally (1) agrees that any suit, action or other legal proceeding arising out of this Agreement or the other Transaction Documents may be brought in the courts of record of the State of New York in Nassau County or the courts of the United States, Eastern District of New York; (2) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (3) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as the Sublease Agreement is in effect, the Obligor's agents designated above shall accept and acknowledge in the Obligor's behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Obligor agrees and consents that any such service of process upon such agents and written notice of such service to the Obligor in the manner set forth in Section 11 hereof shall be taken and held to be valid personal service upon the Obligor whether or not the Obligor shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same force and validity as if service were made upon the Obligor according to the laws governing the validity and requirements of such service in the State of New York, and waives all claim of error by reason of any such service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Obligor or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Obligor.

Section 21. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, as the same may be in effect from time to time, without regard to principles of conflicts of laws.

Section 22. Nature of Obligations. This Agreement shall remain in full force and effect until each and every one of the PILOT Obligations shall have been irrevocably paid in full and all other obligations of the Obligor under this Agreement shall have been paid and performed in full.

If the Obligor consists of more than one (1) Person, the obligations of the Obligor under this Agreement shall be joint and several.

Section 23. Indemnification. The Obligor agrees to indemnify, defend (with counsel selected by the Agency and reasonably acceptable to the Obligor) and hold harmless the

Agency and its officers, members, agents (other than the Obligor), attorneys, servants and employees, past, present and future, against any liability arising from any default by the Obligor in performing its obligations hereunder or any expense incurred hereunder, including, without limitation, any expenses of the Agency and reasonable attorneys' fees and expenses.

[Remainder of this page intentionally left blank]

*[Signature Page to Payment in Lieu of Taxes Agreement]*

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

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
Harry Coghlan  
Chief Executive Officer / Executive Director

**HOME DEPOT U.S.A., INC.**

By: \_\_\_\_\_  
John D. Chescavage  
Corporate Counsel

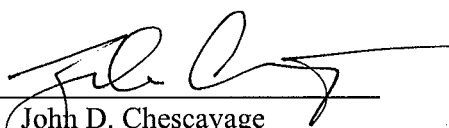
*[Signature Page to Payment in Lieu of Taxes Agreement]*

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**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Harry Coghlan  
Chief Executive Officer / Executive Director

**HOME DEPOT U.S.A., INC.**

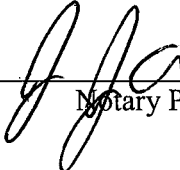
By:  \_\_\_\_\_  
John D. Chescavage  
Corporate Counsel

[Acknowledgement Page to Payment in Lieu of Taxes Agreement]

STATE OF NEW YORK )  
 : ss.:  
COUNTY OF NASSAU )

On the 29 day of October, 2020, before me, the undersigned, a notary public in and for said state, personally appeared **Harry Coghlan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

John J. Anzalone  
Notary Public State of New York  
Suffolk County LIC# 02AN6256008  
Comm Exp. March 12, 2024

  
\_\_\_\_\_  
Notary Public

STATE OF GEORGIA )  
 : ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a notary public in and for said state, personally appeared **John D. Chescavage**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public



[Acknowledgement Page to Payment in Lieu of Taxes Agreement]

STATE OF NEW YORK     )  
  : ss.:  
COUNTY OF NASSAU     )

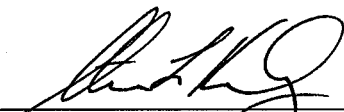
On the \_\_\_ day of October, 2020, before me, the undersigned, a notary public in and for said state, personally appeared **Harry Coghlan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

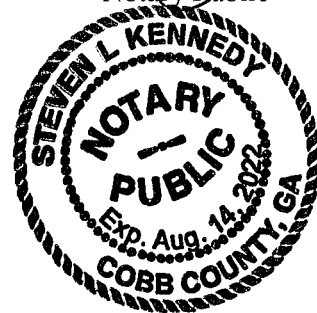
John J. Anzalone  
Notary Public State of New York  
Suffolk County LIC# 02AN6256008  
Comm Exp. March 12, 2024

\_\_\_\_\_  
Notary Public

STATE OF GEORGIA     )  
  : ss.:  
COUNTY OF Fulton     )

On the 29<sup>th</sup> day of October, 2020, before me, the undersigned, a notary public in and for said state, personally appeared **John D. Chescavage**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public



## SCHEDULE A

### DESCRIPTION

ALL that certain plot, piece or parcel of land, situate, lying and being in the unincorporated area of Hicksville, in the Town of Oyster Bay, County of Nassau and State of New York, bounded and described as follows:

COMMENCING at the extreme Easterly end of a curve with a radius of 40.07 feet and a length of 71.38 feet connecting the Easterly side of Charlotte Street with the Northerly side of Duffy Avenue;

THENCE North 52 degrees 16 minutes 00 seconds East, 383.35 feet to the Easterly side of lands now or formerly of Jules Gottlieb and George Moncher and the point of BEGINNING;

RUNNING THENCE along said lands the following two (2) bearings and distances:

- 1) North 07 degrees 58 minutes 00 seconds West, 63.50 feet;
- 2) South 82 degrees 03 minutes 40 seconds West, 346.72 feet to lands now or formerly of the State of New York;

THENCE the following three (3) bearings and distances along said lands:

- 1) North 01 degrees 43 minutes 00 seconds East, 569.15 feet;
- 2) South 88 degrees 17 minutes 00 seconds East, 50.00 feet;
- 3) North 01 degrees 43 minutes 00 seconds East, 95.97 feet to the Southerly side of lands now or formerly of the Long Island Railroad;

THENCE the following two (2) bearings and distances along said lands:

- 1) North 76 degrees 18 minutes 30 seconds East, 78.03 feet;
- 2) North 82 degrees 02 minutes 00 seconds East, 409.69 feet to lands now or formerly of 300 Duffy Avenue Real Estate, LLC;

THENCE along said lands South 07 degrees 58 minutes 00 seconds East, 669.79 feet to the Northerly side of Duffy Avenue;

THENCE the following two (2) bearings and distances along said lands:

- 1) South 76 degrees 49 minutes 40 seconds West, 258.20 feet;
- 2) South 52 degrees 16 minutes 00 seconds West, 51.42 feet to the point or place of BEGINNING.

## SCHEDULE B

### PILOT PAYMENT SCHEDULE

**Term:**

<u>Tax Year<sup>1</sup></u>	<u>Total PILOT Payment</u>
2022 General / 2021/22 School	\$ 293,012
2023 General / 2022/23 School	\$ 375,432
2024 General / 2023/24 School	\$ 457,852
2025 General / 2024/25 School	\$ 540,271
2026 General / 2025/26 School	\$ 622,691
2027 General / 2026/27 School	\$ 717,873
2028 General / 2027/28 School	\$ 816,297
2029 General / 2028/29 School	\$ 918,049
2030 General / 2029/30 School	\$ 1,023,216
2031 General / 2030/31 School	\$ 1,131,890
2032 General / 2031/32 School*	\$ 1,244,163
2033 General / 2032/33 School	\$ 1,360,129
2034 General / 2033/34 School	\$ 1,479,886
2035 General / 2034/35 School	\$ 1,603,532
2036 General / 2035/36 School	\$ 1,731,169

\*Years 11-15 Subject to Extension of Sublease

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<sup>1</sup> Actual PILOT Commencement Date is subject to timely acceptance of the Application by the appropriate tax assessor(s).