

AGREEMENT

(AGREEMENT NO. 1)

COPY

This Agreement is made and entered into by and between the City of El Monte, a general law city ("El Monte"), the City of Temple City, a charter city ("Temple City"), and Home Depot U.S.A., Inc., a Delaware corporation ("Home Depot"; collectively "Parties").

WITNESSETH:

The parties hereto do agree as follows:

Section 1. Recitals. This Agreement is made and entered into with respect to the following facts which the parties acknowledge to be true and correct:

- (a) Home Depot desires to develop a Home Depot Store and Garden Store in the City of El Monte ("Project") on certain real property described on Exhibit "A" attached hereto and incorporated herein by this reference ("Property"); and
- (b) That the Property is the subject of an application by Home Depot for a Lot Division (Lot Division No. 574) and a Design Review (DR No. 1098; collectively, the "Entitlements"); and
- (c) That the Property is located entirely within El Monte and abuts certain public streets located in Temple City, and is in the vicinity of certain property in Temple City that is zoned and in use for residential purposes; and
- (d) The Property is located within the Northwest El Monte Redevelopment Project Area. In December 1993, the El Monte Community Redevelopment Agency certified a Program Environmental Impact Report for the Northwest El Monte Redevelopment Project Area ("EIR") and approved the implementation of the Redevelopment Plan; and
- (e) The City of El Monte Planning Division commissioned the preparation of an Initial Study for the Project ("Initial Study"). The Initial

Study, along with a draft of a Mitigated Negative Declaration ("MND"), were circulated for public review beginning on June 25, 1998; and

- (f) On July 15, 1998, the public comment period ended. Written responses to comments received were prepared as of July 23, 1998; and
- (g) On July 30, 1998, the City Planning Commission of the City of El Monte held a duly noticed public hearing, at which time the City Planning Commission received testimony and evidence on the proposed Home Depot Project and whether the adoption of the Mitigated Negative Declaration was appropriate. Both during that hearing and in written comments on the Initial Study and proposed Negative Declaration, Temple City expressed opposition to the Project; and
- (h) After receiving all public testimony, the said Planning Commission voted to adopt the Negative Declaration, and approve Design Review No. 10-98 and Lot Division No. 574 and adopt Resolution 2534 (the "Planning Commission Decision"); and
- (i) Temple City filed a timely appeal appealing the Planning Commission's decision to the City Council ("Temple City's Appeal"); and
- (j) The El Monte City Council conducted a duly noticed public hearing with reference to Temple City's Appeal, and, thereafter, sustained the Planning Commission Decision ("City Council Determination"); and
- (k) That the parties desire by this Agreement to provide for the withdrawal of Temple City's objections to the Project, including, but not limited to, the withdrawal of the Temple City Appeal and to eliminate the need for litigation concerning the approval of the Project or the adequacy of the MND by any of the Parties; and
- (l) That the legislative bodies of El Monte and Temple City have each heretofore found that the public interest, convenience and necessity require the execution of this Agreement.

Section 2. Home Depot's Obligations. Nothing contained in this Section, 2, shall be construed as a "mitigation measure" within the meaning of CEQA; nor as any deficiency in the MND; nor as a violation of CEQA with respect to the Project.

Home Depot shall be obligated, with respect to its said Project, to comply with the following terms and conditions set forth below in this Section, 2:

- (a) Median. Home Depot shall, at its sole cost, cause the construction of a raised landscaped median with an irrigation system ("Median") on Lower Azusa Road as is shown on Exhibit "B", incorporated herein by this reference and attached hereto, although in no event shall Home Depot be required to widen, or pay for the widening of, any portion of Lower Azusa Road. Temple City, at its sole cost, shall be responsible for the design and preparation of construction documents for the Median, in accordance with Exhibit "B". Temple City shall promptly cause the design of said Median to be prepared and submitted to Home Depot for its review and approval within not to exceed fifteen (15) consecutive days from and after the effective date of this Agreement. The design shall be accomplished in accordance with the standards applied to such medians by the County of Los Angeles. Home Depot shall accept the design if the same is accomplished in accordance with the standards of the County of Los Angeles and is in substantial compliance with Exhibit B. The Median shall be constructed by a contractor selected by Home Depot if the cost of such work is less than the cost would be if the Median were constructed by Temple City. If Temple City desires to cause the construction of the Median, in accordance with the design and the provisions of Exhibit "B", it may do so; and in such event Home Depot shall pay to Temple City, upon completion of the construction of the Median, an amount equal to the lowest responsible bid or proposal received by Home Depot for such work; and

- (b) Traffic Signal. Home Depot reconfirms that as part of its existing Project design, it shall at its sole cost, construct and install a traffic signal at the intersection of Lower Azusa Road and the easterly project driveway as shown on its certain Site map attached hereto and marked Exhibit "C" ("Site Diagram"); and
- (c) Ellis Lane. Home Depot shall pay to Temple City a sum equal to the reasonable cost of preparing and posting signs on Ellis Lane precluding the use of that street by trucks having the capacity of over six tons; and
- (d) Truck Barriers. Home Depot reconfirms that as part of its existing Project design, it shall construct and maintain truck barriers (i.e., truck head stops) on the Property at the driveway approach from Ellis Lane; and
- (e) Street Lighting. Home Depot shall be responsible for the reasonable cost of installation of any necessary street lights in and along all public street frontages of the Property, consistent with existing Southern California Edison Company's standards and Temple City's ordinances relating thereto; and
- (f) Landscaping Plan. Home Depot shall prepare and submit to El Monte for review and approval, a landscaping plan for the Property. El Monte shall, contemporaneously with its review of the landscaping plan, submit the same to Temple City for its review and comment. Temple City shall respond in writing to El Monte with any comments it has concerning the landscaping plan within seven (7) consecutive calendar days after the delivery to Temple City of such plan. El Monte shall not approve the landscaping plan until it has received comments from Temple City relating to it, or, if no comments are delivered to El Monte by Temple City within the said seven (7) consecutive calendar day period, El Monte shall proceed to approve the plan if it complies with applicable provisions of the El Monte Municipal Code and conditions of approval imposed on Lot

Division No. 574 and DR No. 1098 and other administrative regulations; and

- (g) Signage Plan. Home Depot shall prepare a signage plan for signage for the Project. The Plan shall be submitted to El Monte for review and approval. El Monte shall transmit to Temple City the signage plan when received from Home Depot for review and comment by Temple City. Temple City shall submit its written comments to El Monte within seven (7) consecutive calendar days after delivery to Temple City of the signage plan. El Monte shall not approve any part of the signage plan without taking into account any and all comments made by Temple City, or if no comments are delivered by Temple City to El Monte within said seven (7) day period, El Monte shall approve the Signage Plan if it complies with the El Monte Municipal Code and the conditions of approval imposed upon Lot Division No. 574 and DR No. 1098. Notwithstanding the foregoing, flashing and/or blinking signs of any kind shall not be installed; and
- (h) Noise. After the Project is constructed and in operation, Home Depot shall not increase the hours permitted for deliveries by trucks to the Project, unless and until a new noise study is prepared for review by Temple City and El Monte. No increase in truck delivery hours shall be permitted unless such new noise study indicates that the same will not violate the noise ordinance of El Monte or of Temple City existing as of the date of this Agreement, whichever is more restrictive. If any reasonable mitigation measures are recommended in the new noise study, Home Depot shall implement those measures before a change in the hours permitted from delivery is accomplished; and
- (i) Mitigation Measures. Home Depot reconfirms that it is responsible for compliance with all mitigation measures imposed pursuant to the MND relating to the Project. Nothing contained in Section 2(b), (d) and (i) shall be construed to convey to Temple City any rights as against Home Depot or El Monte in addition to rights it may

have had under existing law if this Agreement had not been executed; and

- (j) Recreation Program. Home Depot shall provide on the Property the program it has developed and has in use in its other stores for children demonstrating to them the manner in which tools should be used and how construction projects should be undertaken. A description of the nature of that program is set forth on Exhibit "D" attached hereto and incorporated herein by this reference; and
- (k) Reimbursement to Temple City-Staff. Home Depot agrees to pay Temple City the sum of \$10,000 which represents the approximate cost to Temple City of staff time by staff members of Temple City in reviewing the Project.

Section 3. El Monte's Obligations. El Monte shall be obligated, with respect to the Project as follows:

- (a) El Monte shall pay to Temple City annually a sum equal to five percent (5%) of sales tax revenues actually received by El Monte derived from sales occurring on the Property; and
- (b) Any further projects located within the Northwest El Monte Redevelopment Project Area shall be made to comply with the provisions of all applicable laws, including, but not limited to, CEQA; and
- (c) If at anytime during the continued operation of the Project that an application is made to El Monte for a change in the Project as approved, El Monte shall submit any such application to Temple City for its review and comment. Temple City shall respond to El Monte with any comments it may have concerning such proposed change within seven (7) consecutive calendar days after delivery of the same to Temple City. El Monte shall not take any final steps in approving any such change sought until it has received comments from Temple City relating to the same or, if no written comments are delivered to El Monte by Temple City within the said seven (7) consecutive days, El Monte shall proceed to approve such

changes if the same complies with all applicable laws.

Section 4. Enforcement Procedures for Certain Measures. Certain measures, which are hereafter described, are of special interest to Temple City and in the absence of the enforcement procedures regarding those measures contained herein, Temple City would not have executed this Agreement. The measures to which this Section, 4, relates are set forth on Exhibit E, attached hereto and incorporated herein by this reference (hereafter "Measures").

The Parties understand and agree that El Monte is obligated to take all reasonable steps to enforce the Measures, as well as enforcement of all mitigation measures referred to in the MND and the conditions of approval imposed upon the approval of the Entitlements. However, El Monte and Temple City desire, pursuant to this Section, 4, to provide Temple City with an exclusive procedure to require that El Monte meets its obligation to enforce compliance with the Measures. The Parties have agreed and acknowledge that the most acceptable procedure is as follows:

- (a) Allegations of Violation. Temple City shall, in writing, advise El Monte of any continuing substantial violation by Home Depot of any of the Measures which it contends exist ("Complaint"). Such a Complaint shall include evidence of the existence of a continuing substantial violation, by Home Depot which shall include, without limitation, pictures, tapes and/or declarations made under penalty of perjury detailing the alleged violation(s).
- (b) El Monte's Investigation. El Monte shall promptly review a Complaint. If El Monte's investigation discloses that a substantial continuing violation of a Measure exists, El Monte shall take such steps as may be reasonably necessary, as a part of El Monte's Code Enforcement Program, to require Home Depot to comply with each of the said Measures. If it appears to El Monte that a continuing substantial violation exists, El Monte shall take such steps

as are reasonably required to abate such violation.

If as a result of the investigation it appears to El Monte that there is inadequate or insubstantial evidence of a continuing substantial violation by Home Depot of any of the Measures, as alleged in the Complaint, El Monte shall advise Temple City thereof and no further action shall be taken concerning such complaint unless Temple City is able to demonstrate, to the reasonable satisfaction of El Monte, that there is evidence of a substantial continuing violation by Home Depot of any one or more of the Measures.

- (c) Failure to Correct Hearing Procedure. If after a review and investigation by El Monte, Temple City reasonably believes that a continuing substantial violation of one or more of the Measures exists, and that El Monte has failed to take reasonable steps to obtain compliance by Home Depot, Temple City may appoint an independent hearing officer, who shall conduct a duly noticed public hearing to determine whether or not there has been a continuing substantial violation by Home Depot of one or more of the Measures and if so, whether El Monte has taken reasonable steps to correct or remedy the same. The burden of proof to show, by a preponderance of the evidence, the existence of such a continuing substantial violation and a failure by El Monte to take reasonable steps to abate the same, shall be upon Temple City. El Monte shall make available to Temple City and to Home Depot its records and files relating to its review and investigation of the incident under consideration. If, as a result of the evidence submitted at the hearing, the hearing officer concludes that a continuing substantial violation of one or more of the Measures has occurred and that El Monte has not acted reasonably in abating the same, Temple City shall be entitled to an award of liquidated damages therefor as provided in subdivision (d) below. Any determination by the Hearing Officer shall have no effect or relevancy to Home Depot, and shall not be binding on Home Depot and said determination shall not be admissible in any judicial proceeding or

arbitration to which Home Depot is a party. The Hearing Officer's determination shall only be relevant to the issue of whether Temple City is entitled to an award of liquidated damages as provided in Section 4(d) and (e), below.

- (d) Liquidated Damages. El Monte and Temple City have agreed and acknowledged that if there is a continuing substantial violation by Home Depot of any of the Measures and if El Monte has failed to take reasonable steps to abate the same, that Temple City will suffer damages as a result thereof. Such damages are difficult if not impossible to ascertain with any degree of accuracy. Accordingly, El Monte and Temple City have agreed that in the event of such a continuing substantial violation by Home Depot and a failure of El Monte to take reasonable steps to abate the same, Temple City shall be entitled to recover from the deposit, hereafter described, as and for liquidated damages and not as a penalty, the following sums: the sum of One Thousand Dollars (\$1,000) for the first continuing substantial violation of a Measure; for a second continuing substantial violation of the same Measure, the sum of Five Thousand Dollars (\$5,000); for the third and each thereafter of the same continuing substantial violation, the sum of Ten Thousand Dollars (\$10,000). El Monte may not seek reimbursement of such funds from Home Depot.
- (e) Deposit. El Monte shall deposit in an interest bearing trust account the sum of One Hundred Thousand Dollars (\$100,000). The City Manager of the City of Temple City shall be the trustee of said account and shall be authorized to pay into Temple City's general fund sums finally awarded hereunder by the hearing officer as and for liquidated damages.
- (f) Arbitration. If either El Monte or Temple City is dissatisfied with a decision by the Hearing Officer, it may within thirty (30) days after receiving notice of the action taken by the Hearing Officer, submit the matter to arbitration as provided in Section 13 of this Agreement. The

prevailing party in such arbitration shall be entitled to recover all of its costs, including attorneys' fees reasonably incurred in such litigation. If an award of liquidated damage has been made, and the award is overturned in the arbitration proceeding, Temple City shall reimburse the deposit made by El Monte in the trust account, in the amount of the award, of liquidated damages, together with interest thereon, at the rate of ten percent (10%) per annum.

- (g) Conduct of Hearing. The Hearing Officer, in conducting hearings pursuant to this Section, 4, shall not be required to observe the formal rules of evidence applicable to a judicial proceeding; however, the Hearing Officer shall accept only reasonably reliable evidence which is relevant to one or more of the issues in the proceeding. Any and all interested persons shall be permitted to present relevant reliable evidence under oath in such hearing.
- (h) Termination of Procedure. The provisions of this Section, 4, shall be of no further force and effect twenty-four (24) months following the issuance of a Certificate of Occupancy for the Project. At that time all sums remaining in the deposit shall be returned, together with interest earned thereon, to El Monte.
- (i) Limitation of El Monte's Obligation. El Monte's obligation pursuant to this Section, 4, shall not exceed in any case, the amount of the original deposit made hereunder, to wit: (\$100,000).

Section 5. Modifications to Project. Except as expressly provided in subparagraph (h) of Section 2, of this Agreement, Home Depot agrees that it will not seek or obtain approval of any change in the Project relating to the Measures for a period of twenty-four (24) months from and after the date that a Certificate of Occupancy is issued for the Project by El Monte.

Section 6. Temple City's Obligations.

shall comply with all applicable laws including, but not limited to, applicable provisions of the El Monte Municipal Code.

Section 10. Notices. Whenever notices are required to be given pursuant to the provisions of this Agreement, the same shall be in written form and shall be served upon the party to whom addressed by personal service as required in judicial proceedings, or by deposit of the same in the custody of the United States Postal Service or its lawful successor in interest, postage prepaid, addressed to the parties as follows:

EL MONTE: City of El Monte  
11333 Valley Boulevard  
El Monte, California 91731  
Attn: Greg Korduner, City Administrator

TEMPLE CITY: City of Temple City  
9701 Las Tunas Drive  
Temple City, California 91780  
Attn: Hugh Riley, City Manager

HOME DEPOT: Home Depot  
McClintock, Weston, Benshoof,  
Rocheffort, Rubalcava and MacCuish, LLP  
444 S. Flower Street  
43th Floor  
Los Angeles, CA 90071  
Attn: Edward Casey, Esq.

Notices shall be deemed, for all purposes, to have been given on the date of personal service or three (3) consecutive calendar days following the deposit of the same in the custody of the United States mail.

Section 11. Binding Effect. The provisions of this Agreement shall be binding upon the parties hereto and their respective successors in interest.

Section 12. Section Headings. The section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents of the sections to which they relate.

Section 13. No Presumption Re Drafter. The parties acknowledge and agree that the terms and provisions of this

Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

Section 14. Assistance of Counsel. Each party to this Agreement warrants to each other party, as follows:

- (a) That each party had the assistance of counsel in the negotiation for, and execution of, this Agreement, and all related documents; and
- (b) That each party has lawfully authorized the execution of this Agreement.

Section 15. Arbitration. The parties hereto agree that any claim or dispute between them arising out of or relating to the terms of this Agreement, shall be resolved by compulsory binding arbitration conducted by a retired Superior Court Judge of the State of California selected as provided below, or by a qualified person the parties mutually agree upon. The claim or dispute being arbitrated shall be resolved in accordance with California law.

The arbitration proceedings shall be governed by the laws and procedures governing civil judicial proceedings in this State. Each party shall comply with all applicable laws relating to binding and compulsory arbitration, the directions given by the Arbitrator and the provisions of this Agreement. The determinations made by the Arbitrator, if within the scope of the Arbitration and the Arbitrator's function, shall be binding and conclusive on the parties and shall be enforceable in the manner provided by law.

Where the parties do not reach agreement upon a qualified person to act as Arbitrator, the Arbitrator shall be selected in the following manner.

- (a) The party initiating the arbitration ("Initiating Party") shall prepare and submit to the other party ("Responding Party") a list ("List")

containing the names of not to exceed three (3) retired Superior Court Judges all of whom the Initiating Party believes are qualified to serve as Arbitrator. The names of the judges on the List shall be numbered consecutively.

(b) The Responding Party, within ten (10) calendar days after service of the List, may either:

(1) select one of the named retired judges to act as Arbitrator, in which case that retired judge shall serve as the Arbitrator; or

(2) strike one (1) name from the List.

(c) Upon expiration of said ten (10) day period, if no selection is made by the Responding Party, the Arbitrator shall be the retired judge on the List with the lowest number next to his name, whether or not the Responding Party has stricken a name during the ten (10) day period.

(d) If, for any reason, the retired judge designated as the Arbitrator is unwilling or unable to serve as the Arbitrator, the judge on the List with the next lower number whose name was not stricken shall be the Arbitrator. In the event that none of the retired judges named on a List, are willing or able to serve as the Arbitrator, the Initiating Party shall prepare and submit a new List, containing the names of not to exceed three (3) different retired judges, and the above described procedure shall be followed until an Arbitrator is selected.

By way of illustration, if the List served by the Initiating Party, upon the Responding Party, has the name of three (3) retired judges, A, B and C. numbered 1, 2 and 3, respectively; and number 1 is stricken, then B, Number 2, shall be deemed, for all purposes, to be the selected Arbitrator.

Section 16. Severability. Each paragraph and provision of this Agreement is severable from each other

provision, and if any provision or party thereof is declared invalid, the remaining provision shall nevertheless remain in full force and effect.

Section 17. Modification. This Agreement shall not be modified except by written agreement of the parties.

Section 18. Entire Agreement. This Agreement contains the entire agreement and understanding between the parties hereto concerning the subject matter of this Agreement, and supersedes and replaces any and all prior written or oral negotiations, proposed agreements or agreements. Each party acknowledges that no other party, or any agent or attorney of any party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof to induce any party to execute this Agreement, and each party acknowledges that it has not executed this Agreement in reliance on any such promise, representation or warranty not contained herein.

Section 19. Governing Law. This Agreement is made and entered into in the State of California and the parties agree that it shall in all respects be interpreted, enforced and governed under the laws of the State of California.

Section 20. Counterparts. This Agreement may be executed in counterparts with the same force and effect as of executed in one complete document.

Section 21. Amendments. Any amendment or modification of this Agreement must be in writing stating that it is intended to amend or modify this Agreement and signed by the Parties.


Section 22. Attorneys' Fees. If a proceeding is brought pursuant to Section 15 to enforce this Agreement, the prevailing party in such arbitration shall be entitled to recover the reasonable cost of its attorneys' fees and costs.

Section 23. Effective Date. The effective date of this Agreement shall be September 15, 1998.

The Parties hereto have caused this Agreement to be executed as follows:

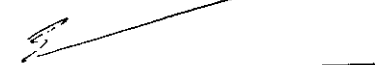


Charles Martin  
City Attorney - Temple City



---

J. Robert Flandrick  
City Attorney - El Monte



---

Edward J. Casey  
Attorney for Home Depot

City of Temple City

By: [Signature]  
Mayor

ATTEST:

By: [Signature]  
City Clerk

City of El Monte

By: [Signature]  
Mayor

ATTEST:

By: [Signature]  
City Clerk

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

By: [Signature]  
DANIEL R. HATCH

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

APPROVED AS TO FORM AND  
CONTENT:

**EXHIBIT "A"**

## EXHIBIT "A"

That portion of Lot 6 of F. W. Gibson's Tract, in the City of El Monte, County of Los Angeles, State of California, as per map recorded in Book 15, Page 39 of Miscellaneous Records, in the office of the County Recorder of said County, described as follows:

Beginning at the Northwest corner of said Lot 6; thence South  $18^{\circ} 10' 55''$  West, along the Westerly line of said Lot 6, 679.08 feet; thence South  $71^{\circ} 49' 05''$  East, 635.37 feet to the Easterly line of said Lot 6; thence North  $18^{\circ} 9' 26''$  East, along said Easterly line of said Lot 6, 1017.96 feet to the Northerly line of said Lot 6; thence South  $80^{\circ} 05' 30''$  West, along the Northerly line of said Lot 6, 719.70 feet to the point of beginning.

EXCEPT therefrom to be known as Lower Azusa Road, as granted to the City of El Monte by deed recorded December 26, 1975 as Instrument No. 586, Official Records.

**EXHIBIT "B"**



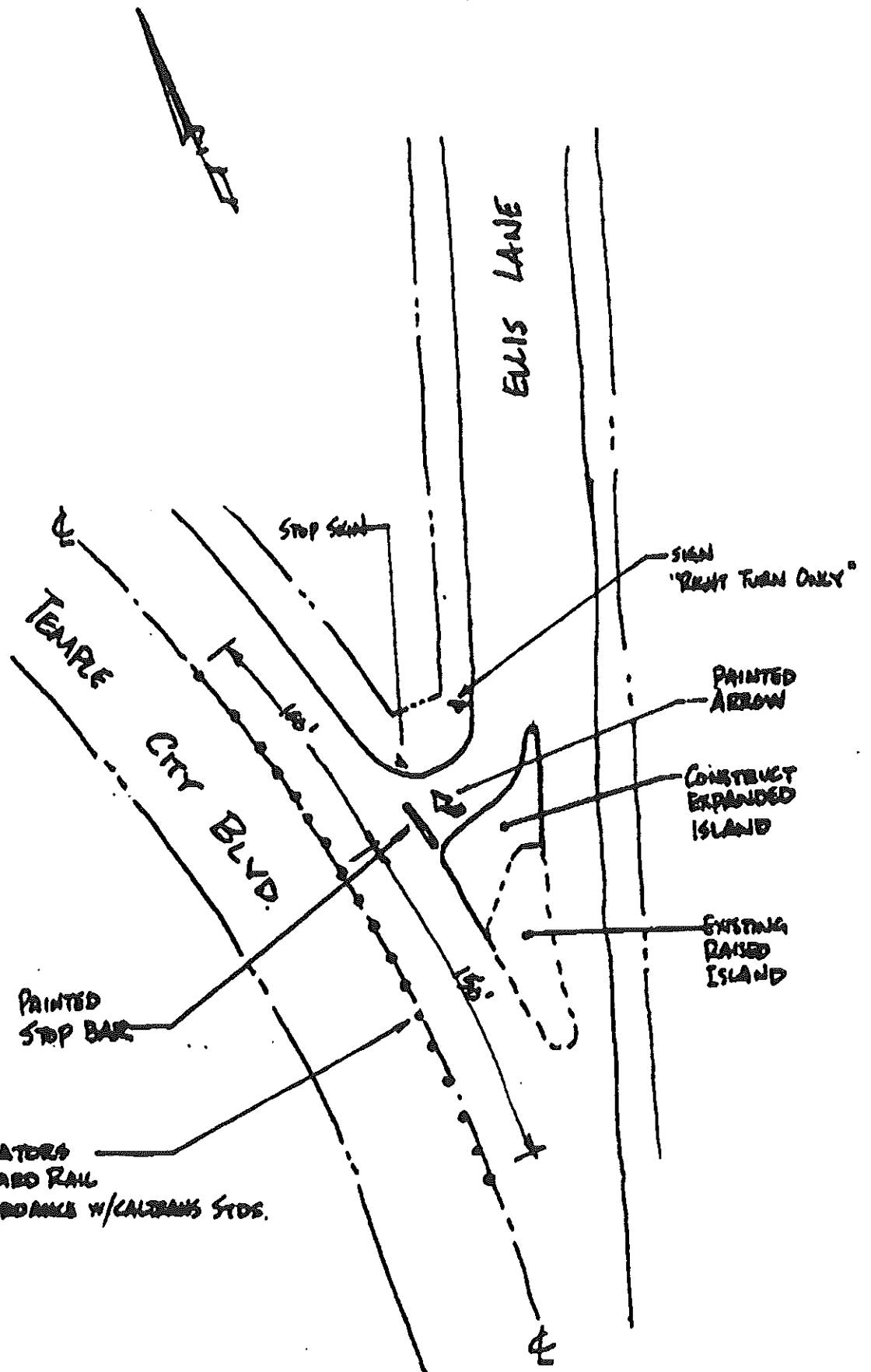
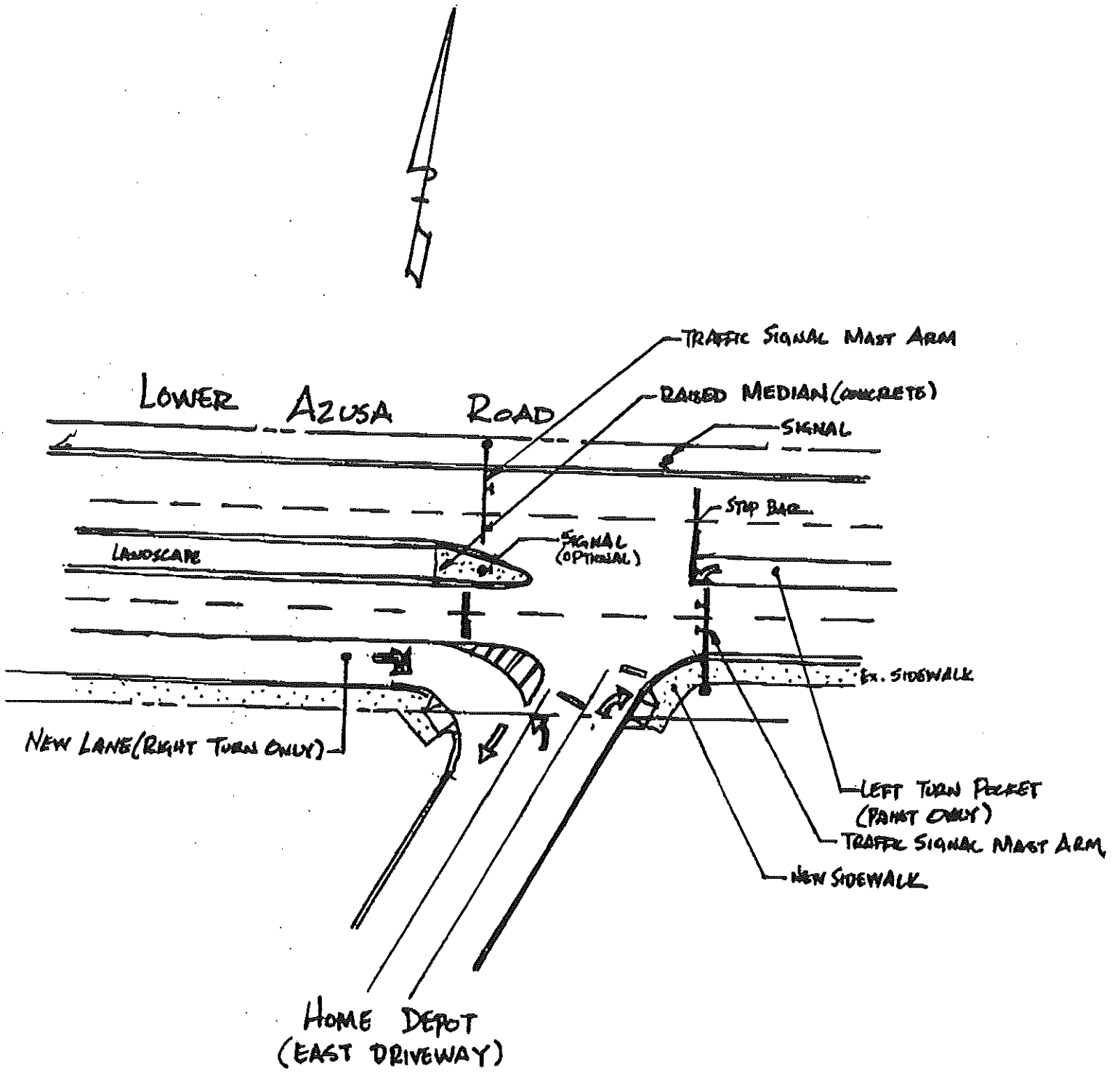


EXHIBIT B

IMPROVEMENTS TO ELLIS LANE & TEMPLE CITY BLVD.

EXHIBIT "C"



PROPOSED IMPROVEMENTS  
 AT  
 EAST DRIVEWAY OF HOME DEPOT  
 AND  
 LOWER AZUSA ROAD

**EXHIBIT "D"**

**Subject: The Home Depot - Kids Workshop**

**In response to the city of Temple City's request for information on the Kids Workshop program, the follow is a description of the program.**

**What is the Kids Workshop?**

**The Kids workshop is an exciting way for The Home Depot to help kids**

- 1. Develop Do-It-Yourself skills**
- 2. Learn safety skills**
- 3. Gain a sense of accomplishment**

**The store orders pre-fabricated kits for each workshop. Kids build a different project each session. Each participant receives an apron, a diploma and an achievement pin, as well as a finished project to take home.**

**Who is it for?**

**The Kids workshops are for kid's ages 6 to 12 and their parents.**

**When are they held?**

**Workshops are held once a month or more depending on the response in the community.**

**Where are they held ?**

**The programs are held in the store at a location determined by the Manager.**

EXHIBIT E

1. Delivery trucks will shut down their engines after five minutes of waiting to get to the delivery area.
2. Compliance with Section 2(h) of the Settlement Agreement between the City of El Monte, the City of Temple City and Home Depot dated September 15, 1998 ("Settlement Agreement").
3. The Home Depot store shall be closed to new business at 10:00 p.m.
4. The hours for trucks delivering merchandise to the Home Depot store shall be 7:00 a.m. to 10:00 p.m., subject to the provisions of Section 2(h) of the Settlement Agreement.