

ATTACHMENT 1

DESIGN PLAN COMPLIANCE AND ENFORCEMENT AGREEMENT

THIS DESIGN PLAN COMPLIANCE AND ENFORCEMENT AGREEMENT ("Agreement"), made this 18 day of August, 1994, by and between THE HOME DEPOT, U.S.A., INC., a Delaware Corporation ("Home Depot"), PCC MARYLAND REALTY CORP., a Maryland Corporation ("PCC Maryland"), and the MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION ("Planning Board").

WHEREAS, PCC Maryland is the fee simple owner and Home Depot is the contract purchaser of all that certain property, currently consisting of 32.75 acres, known as Parcel A on a record plat entitled "Vitro Corporation Property", located at 14000 Georgia Avenue, Silver Spring, Maryland ("Property"), within the Aspen Hill Master Planning Area;

WHEREAS, the Property was the subject of a Preliminary Plan approved by the Planning Board and subsequently recorded by record plat in the Land Records of Montgomery County on September 25, 1956 thereby making any development or redevelopment on the Property subject to the Loophole Closure Law (Chapters 8 and 42B, Montgomery County Code) ("Loophole");

FILED
MONTGOMERY COUNTY
RECORDS OFFICE
2.00
7.00
77.00
Regt # 8593
Act # 1991
Feb 07, 1995 02:37 PM

WHEREAS, the Property has been developed with buildings containing 315,000 square feet of office space, which buildings are intended to be removed and replaced with certain new structures to accommodate certain retail development described hereafter;

WHEREAS, the Property was duly registered pursuant to the Loophole, a copy of the registration being attached as Exhibit A;

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WHEREAS, pursuant to Chapter 33A, Montgomery County Code, the Planning Board prepared and submitted to the Montgomery County Council, sitting as the District Council for the portion of the Maryland-Washington Regional District within Montgomery County ("the Council"), the Final Draft Master Plan for Aspen Hill and Vicinity ("the Draft Master Plan") for the Council's review and approval;

WHEREAS, in the course of the public hearings and worksessions on the Draft Master Plan, Home Depot with the knowledge and consent of PCC Maryland appeared and presented testimony regarding the intended use of the Property and displayed a conceptual, design plan similar in detail to the information and contents found in a typical site plan review and committed to develop the use as displayed;

WHEREAS, the Council requested that the Planning Board and the Planning Department review Home Depot's design plan describing its proposed use of the Property;

WHEREAS, the Planning Board reviewed the design plan prepared by Home Depot that reflected modifications recommended by the Planning Department ("Design Plan") ("Exhibit D") and found it to be acceptable, provided, however, that assurances were presented that would limit development to only that which was proposed in the Design Plan, that is, retail hardware and lumber sales, space not to exceed a maximum of 163,000 square feet, as provided below;

WHEREAS, to enable the proposed development to occur, the Planning Board proposed certain changes to the text of the Draft

Master Plan relative to the Property, intended to reflect the nature, size, and location of all uses, structures and facilities proposed in Design Plan as accepted by the Planning Board;

WHEREAS, the Council agreed with the changes to the Draft Master Plan proposed by the Planning Board and included such provisions in the Approved and Adopted Master Plan ("Master Plan");

WHEREAS, the Property is currently split zoned, falling within the C-2 (for the area to be developed as a retail store) and R-90 (for associated parking, by special exception) zones and is recommended for partial rezoning into the RMX-2C (retail store) and confirmation of R-90 (parking) zones in the Master Plan;

WHEREAS, the proposed development could both be accommodated by and be consistent with, and otherwise satisfy the requirements of, both the existing zoning classification (C-2) and the zoning recommended in the Master Plan (RMX-2C), if implemented by a sectional map amendment;

WHEREAS, given that the Design Plan, reviewed as would a site plan in the context of a public hearing, was approved by the Planning Board, and that the development as proposed and limited by this Agreement conforms to the standards applicable under the C-2 and RMX-2C zones, a building permit may issue and be in conformance with limitations set forth in the Zoning Ordinance relative to pending sectional map amendments;

WHEREAS, the Design Plan represents the 'illustrative site plan' referred to in County Council Resolution No. 12-1545, having been reviewed by the Planning Board substantially as would a site

plan (such as would occur under Section 59-D-3) in the context of the Master Plan;

WHEREAS, pursuant to Section 59-A-4.2 of the Montgomery County Code, 1984 (as amended), Home Depot has received from the Board of Appeals of Montgomery County ("Board of Appeals") an Opinion approving a transfer and amendment to special exceptions, denominated Case Nos. 381A, 1270A, 2235A. Attached hereto as Exhibit "B" is a copy of the Opinion issued by the Board of Appeals with an effective date of April 15, 1994;

WHEREAS, in reviewing the Design Plan the parties agreed that Home Depot should enter into a enforceable agreement, similar in purpose to a Site Plan Enforcement Agreement required by Section 59-D of the Montgomery County Code, intended to ensure Home Depot's compliance with all of the provisions and conditions of the applicable sections of the Master Plan, the attached Design Plan, the Loophole review, and the approved special exception, each as conditioned and limit development in terms of all uses, structures and facilities to that provided for in this Agreement;

WHEREAS, the Master Plan provisions and this enforceable Agreement have facilitated the proposed development;

WHEREAS, any proposed development or redevelopment on the Property requires issuance of a Building Permit and pursuant to Loophole, a building permit may not issue for property and development subject to Loophole unless and until the Planning Board determines that the proposed development will be accommodated by adequate public transportation facilities as such testing is

required under Loophole;

WHEREAS, the parties agree that this Agreement must be fully executed and recorded in order for the Planning Board to complete an Adequate Public Facilities determination on the uses contemplated by Home Depot and in the absence of such review, permits shall not issue;

WHEREAS, while the C-2 zone does not require a formal site plan review, the RMX-2C zone may, subsequent to the construction of the Project as proposed herein, require site plan review if certain amendments are then proposed;

WHEREAS, Home Depot has agreed to enter into this enforcement Agreement in connection with approval of the Master Plan, Design Plan, Loophole, and its special exception in Case No. 381A, 1270A, 2235A; and

WHEREAS, PCC Maryland has joined in the Agreement to allow for these restrictions and obligations to become a matter of record, reserving, however, the right to be released from these restrictions and obligations if the Property is not conveyed to Home Depot and the proposed development is not to be pursued in which case all parties shall execute all such documents as may be needed to release this Agreement of record, such that the parties return to the status quo with respect to the Property as was existing on the date of this Agreement;

WHEREAS, the parties hereto desire to set forth herein their respective requirements and obligations.

NOW, THEREFORE, in consideration of the mutual promises and stipulations set forth herein, the parties hereto agree as follows:

1. The recitals set forth above are hereby incorporated by reference and made a part hereof.

2. Development of the Property, in accordance with the Master Plan, Design Plan, Loophole, and the Special Exception, among other requirements associated with such reviews shall:

(a) be limited to one building of not greater than 163,000 square feet of retail space excluding wall structures, of which not greater than 140,000 square feet shall be enclosed;

(b) provide for the enhancement of existing buffering along the northern and western property lines;

(c) generally place no paving closer than 100 feet from the northern property line;

(d) provide no more than one free-standing advertising sign located away from the residential community;

(e) provide for onsite stormwater management controlling both quantity and quality;

(f) be limited to no greater than 880 parking spaces and provide for a pedestrian-protected walkway and extensive shade trees;

(g) provide that all lighting for parking areas will be directed away from residences and not cast excessive light towards them;

(h) provide that on-site pedestrian paths connect to existing bus stops;

(i) provide for screening trees on the south side of the retail building and street trees along the frontage of the Property on both Georgia Avenue and Connecticut Avenue;

(j) limit access for trucks weighing 5000 pounds or greater to only the Connecticut Avenue Entrance;

(k) discourage automobile access from Aspen Hill Road, via the Lee Development Group property located to the south;

(l) the location of the building, lighting, planting, parking, open space and storm water management shall conform to Exhibits E-1 (3 sheets), E-2 (1 sheet) and E-3 (6 sheets); and

(m) any and all other applicable terms, conditions, restrictions, and limitations related to the Property.

Development on the Property must be strictly limited in accordance with the terms of this Agreement, the Design Plan, the Master Plan, the Loophole review, and the Special Exception Review. The agency with jurisdiction over each particular element shall control that element. Collectively, these requirements and restrictions shall be referred to as the Development Limitations ("Development Limitations").

3. Home Depot must not construct, enlarge, modify or in any manner add any new buildings or additions which, in the reasonable opinion of the Planning Board, in any way increase the square footage of then existing buildings or other facilities, features (including parking area and/or spaces) beyond the Development Limitations, nor shall the Property, in the reasonable opinion of the Planning Board, be committed to any uses inconsistent with the

Development Limitations. Should Home Depot seek to amend or revise some or all of the Development Limitations, Home Depot shall submit an application with the Planning Board to review such an amendment or revision. A request for a minor amendment may be approved administratively by the Planning Department. A modification determined by staff to be more significant than a minor amendment shall be treated as a site plan amendment and be reviewed by the Planning Board in accordance with the procedures set forth in Section 59-D of the Montgomery County Code, and shall include any further review required under Loophole. Amendments to the Development Limitations which require modifications to the Special Exception shall be considered by the Board of Appeals after being reviewed by staff and Planning Board. The recommendations contained in the Master Plan and the purpose and intent of this Agreement shall control any review of such request for amendment.

4. Home Depot must notify the Planning Board in advance of any filing of an application for a building permit or use and occupancy permit for any portion of the Property and provide the Planning Board with a copy of such application when filed. Home Depot must not seek nor receive any building permit or use and occupancy permit for a structure or use on the Property that violates the restrictions created herein. Should Home Depot contemplate any change in a structure or use requiring a permit, in addition to all other requirements contained in this Agreement, such party must secure all necessary permits, notify the Planning Board of such permit application, and provide the Planning Board with a copy of

such permit. Without limiting any other rights or available remedies, in the event permits are sought which in any way violate the restrictions created herein, the Planning Board and the Planning Department are expressly entitled to recommend denial of the issuance of any such permit, and Montgomery County may deny the issuance of such permit, based in whole or part upon this recommendation. Home Depot acknowledges the importance of the ability for the Planning Board to withhold permits that violate the terms of this Agreement and does hereby agree that the Planning Board would be an aggrieved party capable of bringing an administrative appeal before the Montgomery County Board of Appeals and, if necessary, the Circuit Court, challenging the issuance of any permit the Planning Board reasonably finds to be issued in violation of the Agreement. Home Depot shall not contest the issue of standing of the Planning Board in such an administrative appeal.

5. Home Depot agrees that when it commences construction as set forth in the Development Program attached hereto as Exhibit "C", or any amendments thereto, it will limit usage of the Property in accordance with the Development Limitations and will further in a timely manner execute, construct, implement and maintain all the features of the Design Plan, and any subsequent amendments approved by the Planning Board and the Board of Appeals (provided, however, that the stormwater management facility as shown on the Design Plan is an approved concept plan, the ultimate facility shall reflect the final plan as approved by the Montgomery County Department of Environmental Protection). Home Depot agrees to install and

construct all features of the Design Plan in a good and workmanlike manner.

6. Home Depot agrees that construction of the Property will progress in a timely manner in accordance with the Development Program or any amendments thereto.

7. Representatives or designees of the Planning Board may enter upon the Property from time to time for the purpose of inspection and enforcement of the terms, conditions and restrictions of this Agreement. Whenever possible, a representative of Home Depot shall be present at said inspection. In the event that the representative or designee determines on the basis of said inspection that construction is not progressing in accordance with the Design Plan or the Development Program, the representative or designee shall promptly advise Home Depot concerning the problem.

8. Representatives or designees of the Planning Board shall inspect each phase and the construction thereon for compliance with the Design Plan in accordance with the Development Program or any amendments thereto. These inspections are not intended to alter any required inspections to be conducted by DEP. Inspection of the Property shall be made promptly after receipt of written notice from Home Depot as set forth in the Development Program, and whenever possible, a representative of Home Depot shall be present at said inspection. The Planning Board shall promptly advise Home Depot in writing concerning the results of said inspection. All reasonable efforts will be made to conduct the inspection and

inform Home Depot of the results within ten (10) working days.

9. The Planning Board shall recommend for issuance within a reasonable time any permits sought by Home Depot when the Planning Board determines that said permit requests are consistent with the approved Design Plan, Master Plan, Special Exception, and Loophole. Such approval shall not be unreasonably withheld, conditioned or delayed.

10. In the event any party deems there has been a breach of the terms, conditions and restrictions of this agreement, an aggrieved party may pursue as its non-exclusive recourse any and all available remedies provided for at law or in equity under the laws of the State of Maryland or Montgomery County. The remedies shall include the ability to issue civil fines, penalties, and stop work orders to the extent authorized by law. No right, power, or remedy conferred upon or reserved to the Planning Board by this Agreement is intended to exclude any other right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given under this Agreement, or as may now or hereafter exist at law or in equity or by statute. Any failure by the Planning Board to insist upon the strict performance by the Applicant of any of the terms, conditions, covenants, agreements and provisions hereof shall not be deemed to be a waiver of any of such terms, covenants, agreements, conditions and provisions. Notwithstanding any such failure, the Planning Board and County shall have the right thereafter, to insist upon the strict

performance by the Applicant of any and all of the terms, covenants, agreements, provisions, and conditions to be performed and observed under this Agreement.

11. Wherever any portion of this Agreement or the Development Program, or any amendments thereto are in conflict with agreements pertaining to the Property entered into between Home Depot and any federal, state and county agency, Home Depot shall promptly notify the Planning Board concerning such conflict. The Planning Board or its designee will cooperate in attempts to resolve the conflict. Should an unreasonable delay ensue due to the failure to resolve said conflict, Home Depot shall have the right to seek in a timely manner judicial determination of the rights and obligations of all parties, and the Planning Board, for its part, agrees to cooperate in expediting said judicial determination.

12. If Home Depot determines, following commencement of construction on the Property, that the full Development Program cannot be achieved for any reason, Home Depot will submit for approval a restoration schedule to the designee of the Planning Board for purposes of amending the Development Program.

13. Approval of a feature of the Design Plan by the Planning Board after inspection shall not constitute a warranty that the feature is free of latent defects. Therefore, if the Planning Board or its designee approves a feature of the Design Plan which contains a latent defect which was not readily apparent at the time of inspection, upon discovery of said latent defect, the Planning Board may avail itself of the remedial steps provided for under the

terms of the Agreement.

14. The parties acknowledge that PCC Maryland is executing this Agreement and allowing the Agreement to be recorded among the Land Records only in order to facilitate the acquisition of the Property by Home Depot and that PCC Maryland shall have no obligation, responsibility or liability under this Agreement, nor does PCC Maryland have any right to undertake the development contemplated in the Design Plan.

PCC Maryland has joined in the Agreement to allow for these restrictions and obligations to become a matter of record, reserving, however, the right to be automatically released from these restrictions and obligations if the Property is not conveyed to Home Depot. The parties agree to execute all such documents as may be needed to release this Agreement of record, such that the parties return to the status quo with respect to the Property as was existing on the date of this Agreement.

Upon conveyance of the Property to Home Depot, PCC Maryland shall be automatically and fully released from any and all obligation, responsibility or liability under this Agreement.

The parties expressly acknowledge and agree that neither the responsibilities and obligations of Home Depot hereunder nor the rights created by the Design Plan and this Agreement are the responsibilities, obligations, or rights of PCC Maryland.

15. This Agreement shall be recorded among the Land Records of Montgomery County, Maryland.

16. This Agreement may only be modified in writing signed by

the parties hereto, their heirs, successors or assigns and shall become effective when recorded in the aforesaid land records.

17. All of the terms, conditions, stipulations, warranties, representations, obligations, and covenants contained in this Agreement shall apply to and be binding upon, and shall inure to the benefit of the parties and each of their respective heirs, personal representatives, administrators, successors and assigns, including any party acquiring any interest in the Property.

18. All questions with respect to the construction of this Agreement and the rights, remedies and liabilities of the parties shall be determined in accordance with the laws of the State of Maryland.

19. The only parties to this Agreement are Home Depot, PCC Maryland and the Planning Board. There are no third party beneficiaries, and therefore, this Agreement is not intended, and shall not be construed to, benefit or be enforceable by any other person whatsoever.

20. Home Depot certifies that it is a duly formed and validly existing corporation qualified to do business in Maryland and has full authority to execute and deliver the Agreement and to incur and perform the obligations provided for therein.

21. PCC Maryland certifies that it is a duly formed and valid existing corporation qualified to do business in Maryland and has full authority to execute and deliver the Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set our hands and seals this 18 day of August, 1994.

WITNESS:

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

By: A.M. Litt

Name: A.M. LITT

Title: SENIOR CORPORATE COUNSEL-REAL ESTATE

WITNESS:

PCC MARYLAND REALTY CORP.

Kathleen Loyt
Kathleen Loyt

John A. Anderson
Name: John A. Anderson
Title: President

WITNESS:

MONTGOMERY COUNTY PLANNING BOARD

Louise E. Lewis
Louise E. Lewis 8/18/94

By: Charles R. Locher

Name: CHARLES R. LOCHER

Title: DEPUTY PLANNING DIRECTOR

STATE OF GEORGIA

COUNTY OF COBB

)
) ss:
)

APPROVED AS TO LEGAL SUFFICIENCY

[Signature]
M-NCPPC Legal Department

Date 8/12

On this 9th day of August, 1994, before me, the undersigned officer, personally appeared A.M. Litt who acknowledged him/herself to be the SENIOR CORPORATE COUNSEL-REAL ESTATE of The Home Depot, U.S.A., Inc., a Delaware corporation, and that he/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation as such officer.

In Witness Whereof, I hereunto set my hand and official seal.

Maryann T. [Signature]
Notary Public Maryann T. [Signature]

Notary Public, Fulton County, Georgia
My Commission Expires Jan. 15, 1995

STATE OF OHIO)
) ss:
COUNTY OF Montgomery)

On this 17th day of June, 1994, before me, the undersigned officer, personally appeared James A. Britton, who acknowledged him/herself to be the President of PCC MARYLAND REALTY CORP., a Maryland corporation, and that he/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation as such officer.

In Witness Whereof, I hereunto set my hand and official seal.

Emma J. Britton
Notary Public **EMMA J. BRITTON**
Notary Public, State of Ohio
My Commission Expires May 14, 1998

STATE OF Maryland)
) ss:
COUNTY OF Montgomery)

On this 18th day of August, 1994, before me, the undersigned officer, personally appeared _____ for the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

Rosemary C. Krygier
Notary Public **ROSEMARY C. KRYGIER**
Rosemary C. Krygier
My commission expires 8/1/97

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42238.DPA
080894/2

APPLICATION FOR REGISTRATION (Cont'd.)

13247-343

- Name(s) and Address(es) of any Current Tenant(s):

Name Viero Corp (owner)
 Street Number Street Name
 Area Occupied by Tenant Sq. Ft.
 Type of Use
 Number of Employees of Tenants

- Plans for New Construction (if available)

Proposed Use N/A
 Total Bldg Area in Sq. Ft. Year of Completion
 Planned Number of Employees

- Plans for Additions/Modifications to Existing Bldgs. (if available)

Existing Building Area in Sq. Ft. N/A
 Proposed Additions in Sq. Ft. Year of Completion

- Building Permit Application if Submitted

Date of Application N/A
 Application No.

- Any restrictions limiting development on Building Permit?

No. Yes
 If yes, please specify: N/A

- Is this property subject to any Public Improvement Agreements with the County or Restrictive Development Covenants?

No. Yes Unknown X
 If yes, please specify:

- Applicant Information

Name Viero Corp (G.W. Davies, V.P. Administration)
 Street Number 14000 Street Name Georgia Ave
 Phone No. 231-2678

Richard Cleary 231-1901

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue Silver Spring, Maryland 20910-3760
Development Review Division
(301)-495-4585

CERTIFICATE OF REGISTRATION

File Number: 12291119
Date: 08/22/94

THIS IS TO CERTIFY THAT:
VITRO CORPORATION

14000 GEORGIA AVE

Premise Address:

14000 GEORGIA AVE

SILVR SPR

Lot:

Block:

Subdivision:

Parcel:

Plat: 4689

Plat Book: 58

Tax Acct. No.:

982523

Contact:

VITRO CORPORATION--GW DAVIES
14000 GEORGIA AVE

EXHIBIT D
CF 13247.345
BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Telephone
Area Code 301
217-6600

Case Nos. CBA-381, CBA-1270, CBA-2235, and CBA-2339
Case Nos. CBA-381-A, CBA-1270-A, and CBA-2235-A

PETITIONS OF VITRO CORPORATION OF AMERICA
(Hearing held February 23, 1994)

OPINION OF THE BOARD
Effective date of Opinion: April 15, 1994

Vitro Corporation has requested modifications of special exception Case Nos. CBA-381, CBA-1270, CBA-2235 and CBA-2339, pursuant to Section 59-G-2.39 of the Zoning Ordinance, to permit: (1) transfer of special exceptions CBA-381, CBA-1270, and CBA-2235 and CBA-2339 from Vitro to PCC Maryland Realty Corporation and Penn Central Corporation; (2) transfer of special exceptions CBA-381, CBA-1270, CBA-2235 from PCC Maryland Realty Corporation and Penn Central Corporation to Home Depot; (3) a reduction in the number of parking spaces from 1,037 to 670. The revised statement of operations reduced the number of remaining parking spaces to 625; (4) an increase in landscaping, trees, buffering elements and the installation of a security fence; and (5) the replacement of the existing lighting.

The subject property is Part of Parcel A, located at 14000 Georgia Avenue, Silver Spring, Maryland, in the R-90 Zone.

Decisions of the Board: Transfers of Case Nos. CBA-381, CBA-1270, CBA-2235 and CBA-2339 from Vitro to PCC Maryland Realty Corporation and Penn Central Corporation GRANTED.
Transfers of Case Nos. CBA-381, CBA-1270, and CBA-2235 from PCC Maryland Realty Corporation and Penn Central Corporation to Home Depot GRANTED.
Other modifications to transferred special exceptions GRANTED.

Harry Lerch, Esquire, represented the petitioners, and called as witnesses John Westbrook, architect and urban planner; Carl Fry, representing Home Depot; Dan Waguesback, architect; Ed Papazian, traffic engineer; and Doug Lohmeyer, registered professional engineer. William Kominers, Esquire, represented Penn Central Corporation and Vitro, and Eliot Chabot, president of the Aspen Hill Civic Association, also appeared.

Case Nos. CBA-381, CBA-1270, CBA-2235, and CBA-2339

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Case Nos. CBA-381-A, CBA-1270-A, and CBA-2235-A

William Kominers explained the chain of property transfer and asked the Board to transfer Case Nos. CBA-381, CBA-1270, CBA-2235 and CBA-2339 from Vitro to PCC Maryland Realty Corporation and Penn Central Corporation, because the sale of the property from Vitro to them had already taken place. The parties, Home Depot, PCC Maryland Realty Corporation and Penn Central Corporation, then requested the transfer of Case Nos. CBA-381, CBA-1270 and CBA-2235 to Home Depot, contingent on completion of the sale of the property.

Representatives of Home Depot explained that the area covered by the special exception for parking contains approximately 21.3 acres, zoned R-90. The store and much of the parking will be located on twelve acres which are commercially zoned. They confirmed that there will be no charge for parking, no service to persons waiting in cars, except for assistance to customers loading purchases, and no automobile service or repair.

Witnesses explained that single family residences border the property to the north and west. Commercial development is located to the south and east. The proposal includes expanding the already extensive vegetative buffer between existing parking and homes. Berms, landscaping and fences will contribute to the buffer. To the west, a chain link fence covered in black vinyl will be installed within the treed buffer area. A board on board fence, seven feet high, will be used in the northern buffer.

The existing lighting fixtures are 15' high in the northwest portion of the property, and 25' in the northeast portion. They have omni-directional lights. The modification proposes replacing the existing standards with 15' lights in the areas near residential development, and taller fixtures in the areas more removed from the homes. The new fixtures will be equipped with a feature to direct the light toward the pavement.

Currently, 1,037 parking spaces are permitted by special exceptions. The modification, as revised, reduces the number to 625 spaces. In addition, the existing stormwater management facility is "minimal," as described by Home Depot's witnesses. The meadow, which is proposed for the northwest corner of the property, will enhance the control of stormwater runoff. It is possible that in the future a regional stormwater management facility/pond could be installed in the western portion of the property. The existing system is adequate to handle on-site stormwater runoff, partly because the amount of impervious surface will be reduced by 26% (5.6 acres) from the current condition. If the expanded system is installed, it would handle off-site runoff from a much larger area.

According to the expert engineer, most of the Aspen Hill development was constructed prior to the institution of regulations governing the control of stormwater. Home Depot and DEP are investigating the possibility of converting the meadow on the west side of the property into a regional stormwater management pond to capture the runoff from 160 acres north of the site in the Aspen Hill area. Home Depot would attempt to retain as much of the meadow as possible.

Home Depot plans to construct a one-story building on the commercially zoned portion of the property. It will contain approximately 163,000 square feet, significantly reduced from Vitro's buildings which contained 315,000 square feet. The new building will be set back farther than Vitro's from both Georgia Avenue and the residential communities.

Home Depot proposes to post a sign near the intersection of Georgia Avenue and Connecticut Avenue. The sign will be 27' high and will be architecturally integrated with the building.

According to the traffic expert, the site will generate less traffic with Home Depot than with Vitro, even including the traffic from Vitro's continued use of the Lee Building on the adjacent property. The peak times will be Friday, Saturday and Sunday, rather than the morning and evening weekday peak hours which were associated with Vitro. Saturday traffic will be the heaviest. During the week, Home Depot expects that much of the parking lot will be unused.

The plan for the site emphasizes the driveways from Georgia Avenue and Connecticut Avenue, and discourages use of the driveway from Aspen Hill Road. Currently, three driveways connect the property and the Lee Building property. One driveway will remain after the conversion to Home Depot's use. The petitioner is discussing with the State Highway Administration (SHA) the installation of a light at the Georgia Avenue driveway.

The traffic expert found that the roadway network will accommodate the traffic, and that vehicles would have a safe sight distance at the driveways. He further found that there would be no nuisance created by the parking.

Eliot Chabot, president of the Aspen Hill Civic Association, testified that the civic association endorses Home Depot's proposal. He had submitted a letter dated February 22, 1994, in which he stated, "Since it first publicly announced its interest in the Vitro site last November, Home Depot has shown an outstanding willingness to work with the community to meet our concerns about the impact of their use on the immediate neighborhood and the surrounding community." His letter included some of the items which form the agreement between Home Depot and the community. Mr. Chabot emphasized that the buffer areas on the north and west borders of the property would be memorialized by covenants, in perpetuity.

**FINDINGS OF THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION**

Technical Staff at the Maryland-National Capital Park and Planning Commission (M-NCPPC) recommended approval with conditions (Exhibit No. 21).

No one appeared at the hearing in opposition to the proposed modifications, and the record contains no statements in opposition.

FINDINGS OF THE BOARD

The Board is impressed with the level of effort exerted by both Home Depot and the community to reach consensus about measures to alleviate perceived impacts from the new use of the property. The Board understands that Vitro's use as an office was considerably different than Home Depot's is likely to be as a retail business. In some ways the impact will be less intense, while in some ways there is the potential for increased impact. For example, Vitro's use was confined primarily to weekday working hours, while Home Depot's busiest times will be Friday, Saturday and Sunday. Nonetheless, the Board is persuaded by the evidence, testimony, and exhibits that Home Depot has proposed measures to mitigate adverse impact. The Board fully expects that the special exceptions for parking, which are the subject of this Opinion, will result in no adverse impact.

Home Depot has committed to the installation of increased landscaping, buffers such as fences and berms, and replacement lighting with non-glare, directional fixtures. Furthermore, the number of parking spaces will be reduced almost by half, from 1,037 to 625. The reduction will result in less impact on the communities to the north and west, and to an improved stormwater management system.

Based on the testimony and evidence in the record which is binding on the petitioner, the Board finds that the proposed modification satisfies the general conditions for special exception as defined by Section 59-G-1.21 of the Montgomery County Code, as well as the specific requirements for off-street parking in connection with a commercial use as set forth in Section 59-G-2.39.

Therefore, this modification to the special exception to permit: (1) transfer of special exceptions CBA-381, CBA-1270, and CBA-2235 and CBA-2339 from Vitro to PCC Maryland Realty Corporation and Penn Central Corporation; (2) transfer of special exceptions CBA-381, CBA-1270, CBA-2235 from PCC Maryland Realty Corporation and Penn Central Corporation to Home Depot; (3) a reduction in the number of parking spaces from 1,037 to 625; (4) an increase in landscaping, trees, buffering elements and the installation of a security fence; and (5) the replacement of the existing lighting is hereby granted to the petitioner only, subject to the following conditions:

1. Petitioner is bound by the testimony, both oral and written, and all evidence and exhibits in the record.
2. The transfer of the special exceptions from Vitro to PCC Maryland Realty Corporation and Penn Central Corporation (CBA-381, CBA-1270, CBA-2235 and CBA-2339) is effective with this opinion.
3. The transfer of the special exceptions from PCC Maryland Realty Corporation and Penn Central Corporation to Home Depot (CBA-381, CBA-1270 and CBA-2235) will be effective when the sale of the property is completed. Home Depot must notify the Board of Appeals when this occurs.


4. Petitioner must obtain approval of a final landscape, lighting and signage plan from the Technical Staff of the Maryland-National Capital Park and Planning Commission. All plant material must be maintained and replaced as necessary. One copy of the approved plan must be submitted to the Board for its records. One copy of the approved plan must be submitted to the Zoning Supervisor of the Department of Environmental Protection (DEP). Petitioner must obtain a sign permit from DEP.
5. Petitioner must obtain approval of a stormwater management plan from DEP. If a regional stormwater management plan is proposed and approved, petitioner must submit a revised site plan to the Board for its records.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition.

The foregoing Resolution was proposed by William S. Green, and concurred in by Helen R. Strang, Allison Bryant, Judith B. Heimann, Chairman, and K. Lindsay Raufaste.

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 15th day of April, 1994.


Irene H. Gurman
Clerk to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four-months' period within which the right granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

EXHIBIT C

DEVELOPMENT PROGRAM

Project - The project consists of one structure to be constructed in the southeastern corner of the Subject Property and will contain a 135,000 net square feet building materials and supply store together with a 28,000 net square foot garden center including a greenhouse and sun screens.

Local Features - The local features, such as security fence, berms, enhanced landscaping, utilities, grading, seeding, outdoor lighting, plantings, surface paving, and other landscape features shall be completed prior to occupancy of the building, unless weather precludes such completion. In such event, security for such completion shall be provided in a form and in such amount as deemed acceptable by the Planning Board or designee.

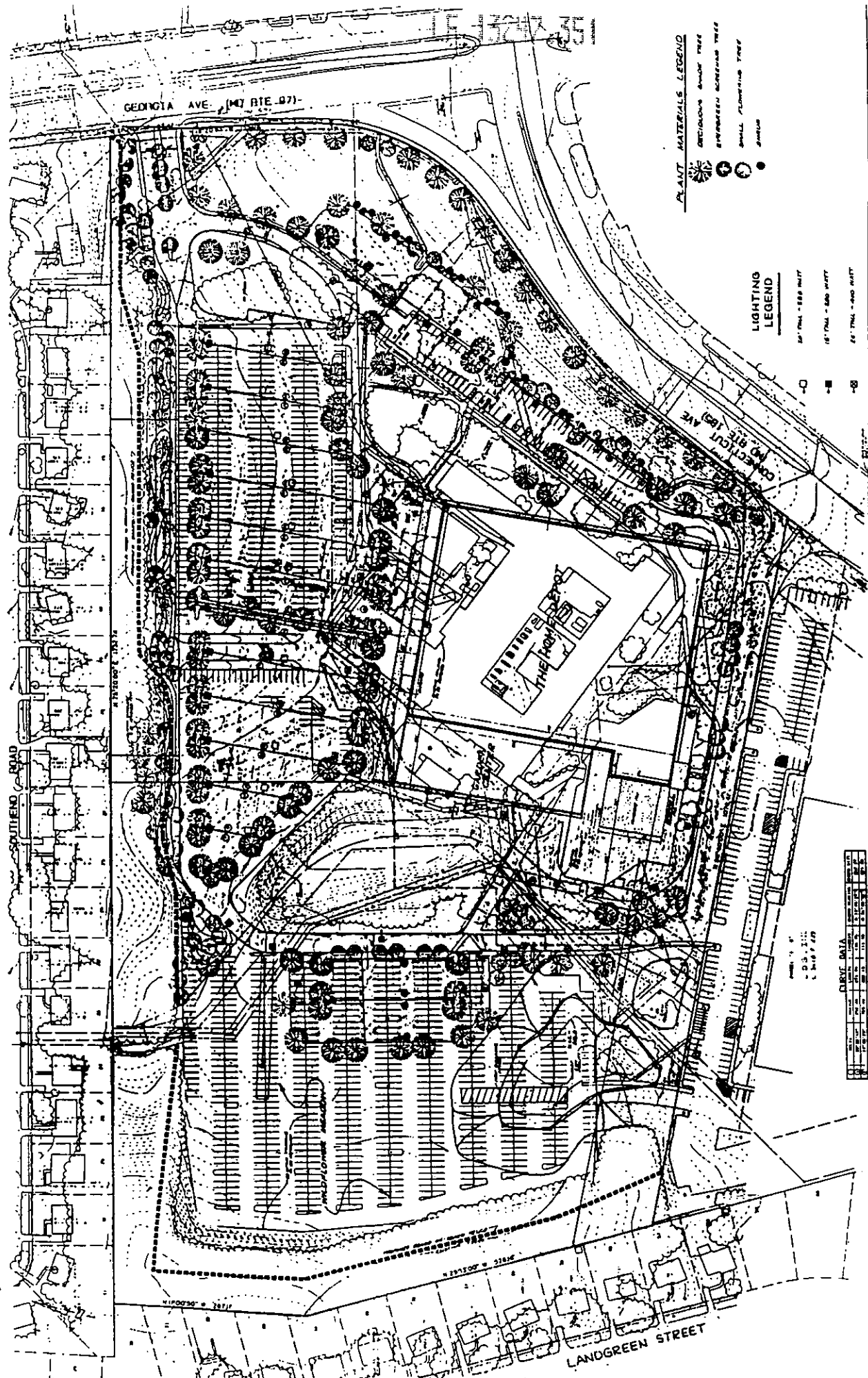
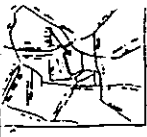
Parking - Parking will be limited to 880 spaces.

Site Infrastructure -

(a) The base paving, curb and gutter, sidewalks, internal roadways and general site utilities shall be completed contemporaneously with construction of the building.

(b) Storm Water Management facilities adequate to serve the Property shall be installed by Home Depot; should the Montgomery County Department of Environmental Protection determine (with the consent of Home Depot) that additional storm water management facilities should be installed, such additional facilities may be installed pursuant to an agreement between DEP and Home Depot, and in accordance with a construction schedule agreed upon between them, without further review or amendment of the Design Plan or this development program, and without affecting Home Depot's ability to occupy the building.

Inspections - There shall be one inspection by M-NCPPC following completion of the building in the project prior to occupancy of the building. Home Depot shall notify M-NCPPC by letter for inspection in accordance with this Development Program and Design Plan Compliance and Enforcement Agreement.



- PLANT MATERIALS LEGEND**
- DECIDUOUS SHADY TREE
 - EVERGREEN SHADY TREE
 - SMALL FLOWERING TREE
 - SHRUB

- LIGHTING LEGEND**
- 50' TALL - 600 WATT
 - 10' TALL - 600 WATT
 - 10' TALL - 400 WATT

GRADE DATA

STATION	EXISTING GRADE	PROPOSED GRADE
1+00	10.00	10.00
1+20	10.00	10.00
1+40	10.00	10.00
1+60	10.00	10.00
1+80	10.00	10.00
2+00	10.00	10.00
2+20	10.00	10.00
2+40	10.00	10.00
2+60	10.00	10.00
2+80	10.00	10.00
3+00	10.00	10.00

RESIDE OF PARCEL A

VITRO CORPORATION PROPERTY

ELECTION DISTRICT

CONCEPTUAL LIGHTING/LANDSCAPE PLAN

THE HOME DEPOT - ASPEN HILL

LOEDERMAN ASSOCIATES, INC.

1000 N. 10TH ST. SUITE 100

MINNEAPOLIS, MN 55412

TEL: 612.338.1111

FAX: 612.338.1112

WWW.LA-INC.COM

NO.	DATE	DESCRIPTION
1	10/1/00	PRELIMINARY
2	10/1/00	REVISION
3	10/1/00	REVISION
4	10/1/00	REVISION
5	10/1/00	REVISION
6	10/1/00	REVISION
7	10/1/00	REVISION
8	10/1/00	REVISION
9	10/1/00	REVISION
10	10/1/00	REVISION

MATCH LINE

SEE SHEET C2

101.

2025.12.24 Don A. C. C. C.
Don A. C. C. C. 2/2007

APPROVED

APPROVED

LEGEND OF SYMBOLS

[illegible]

TIME DATA						
NO.	DATE	TIME	LOCATION	WIND	WAVE	SEA
1	10-10-68	10:00	10:00	10:00	10:00	10:00
2	10-10-68	10:00	10:00	10:00	10:00	10:00
3	10-10-68	10:00	10:00	10:00	10:00	10:00
4	10-10-68	10:00	10:00	10:00	10:00	10:00
5	10-10-68	10:00	10:00	10:00	10:00	10:00
6	10-10-68	10:00	10:00	10:00	10:00	10:00
7	10-10-68	10:00	10:00	10:00	10:00	10:00
8	10-10-68	10:00	10:00	10:00	10:00	10:00
9	10-10-68	10:00	10:00	10:00	10:00	10:00
10	10-10-68	10:00	10:00	10:00	10:00	10:00

more 600 or more than 1000
first time in 1994

· SITE PLAN
GRADING, PAYING & STORM DRAINAGE
THE HOME DEPOT - ASPEN HILL

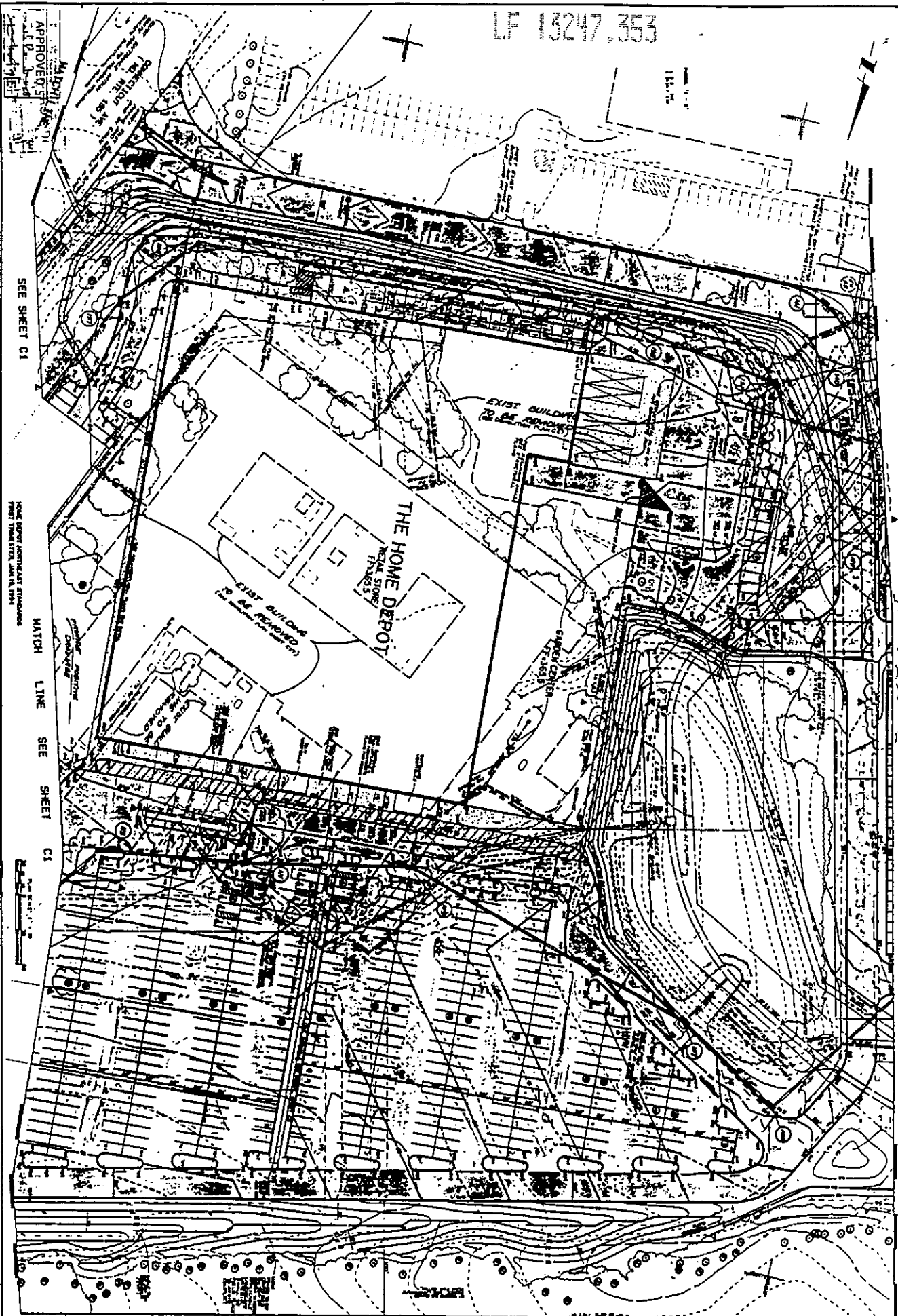
SITE PLAN

RESIDUE OF PARCEL A
VITRO CORPORATION PROPERTY

RESIDUE OF PAROCEL A

VICTIM'S MAF
KILL-P.L.000

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SEE SHEET C1

MATCH LINE SEE SHEET C1

HOME DEPOT HORIZONTAL STATIONING

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LODERMAN ASSOCIATES, INC.
 CIVIL ENGINEERS
 1000 N. 10TH AVE., SUITE 100
 DENVER, CO 80202
 PHONE: 333-1111
 FAX: 333-1112

RESIDUE OF PARCEL A
 VITRO CORPORATION PROPERTY
 WESTERN DISTRICT
 HIGHTOWER DRIVE, ADAMS LAND
 1000 N. 10TH AVE., SUITE 100
 DENVER, CO 80202
 PHONE: 333-1111
 FAX: 333-1112

APPROVED
 [Signature]
 [Stamp]

DATE
 10/1/93

PROJECT
 GRADING, PAVING & STORM DRAINAGE
 THE HOME DEPOT - ASPEN HILL

SCALE
 1" = 40'

DATE
 10/1/93

BY
 [Signature]

C2

MATCH LINE SEE SHEET C2

MATCH LINE SEE SHEET C2

HOME DEPOT NORTH-EAST STAGDALE
7001 TOWNSTAR AVE W 1994

第 一 章

**SITE PLAN
GRADING, PAVING & STORM DRAINAGE
THE HOME DEPOT - ASPEN HILL**

SITE PLAN

RESIDUE OF PARCEL A
VITRO CORPORATION PROPERTY

3 OF 4

3

RESIDE OF PARCEL A
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NATION ELECTION DISTRICT
NATION ELECTION DISTRICT

ELECTRICAL NOTES (PART 1)

1. ALL ELECTRICAL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL ELECTRICAL CODE (NEC) AND THE MARYLAND ELECTRICAL CODE (MEC).
2. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE (NEC) AND THE MARYLAND ELECTRICAL CODE (MEC).
3. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE (NEC) AND THE MARYLAND ELECTRICAL CODE (MEC).
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15. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE (NEC) AND THE MARYLAND ELECTRICAL CODE (MEC).

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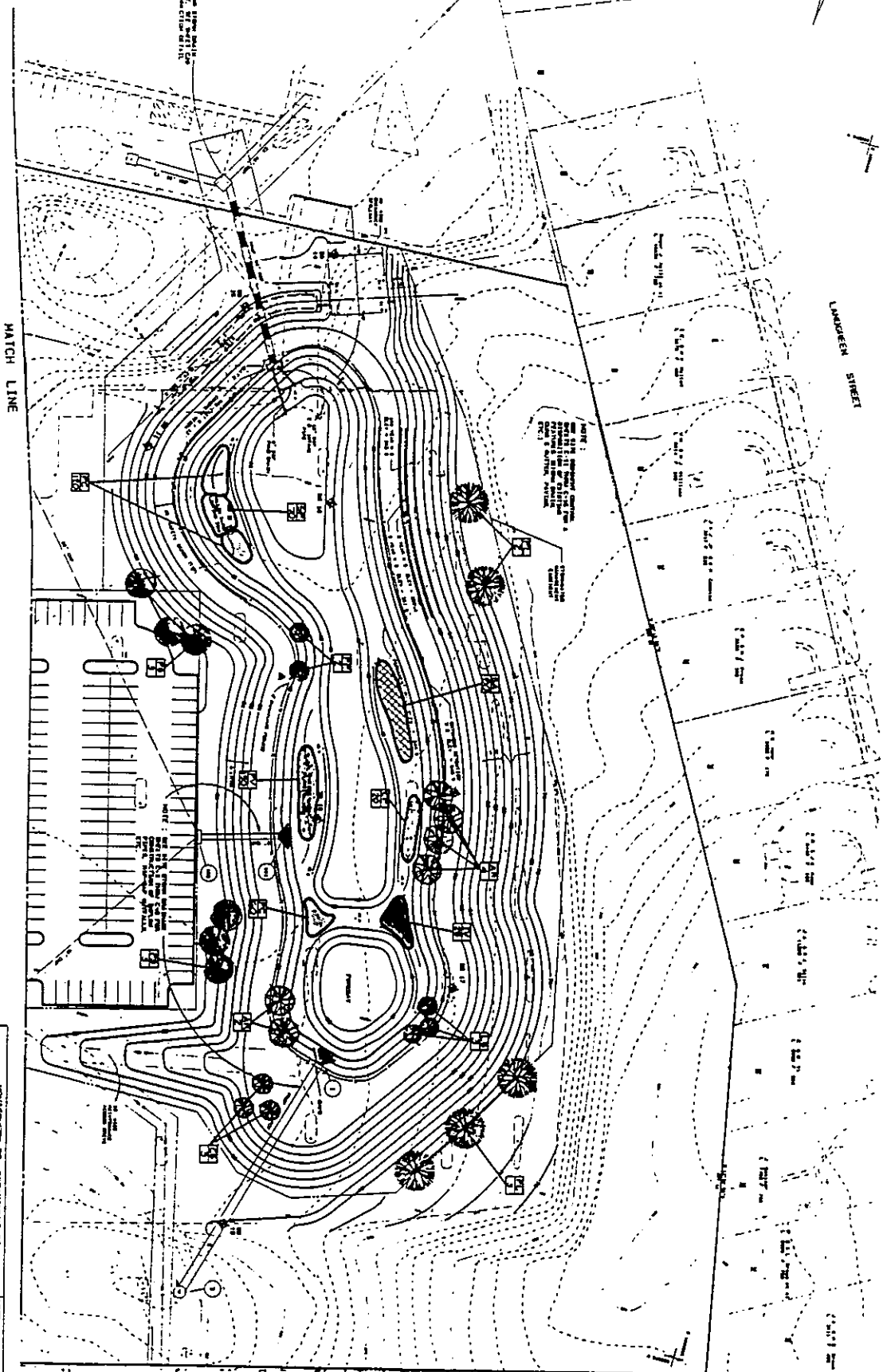
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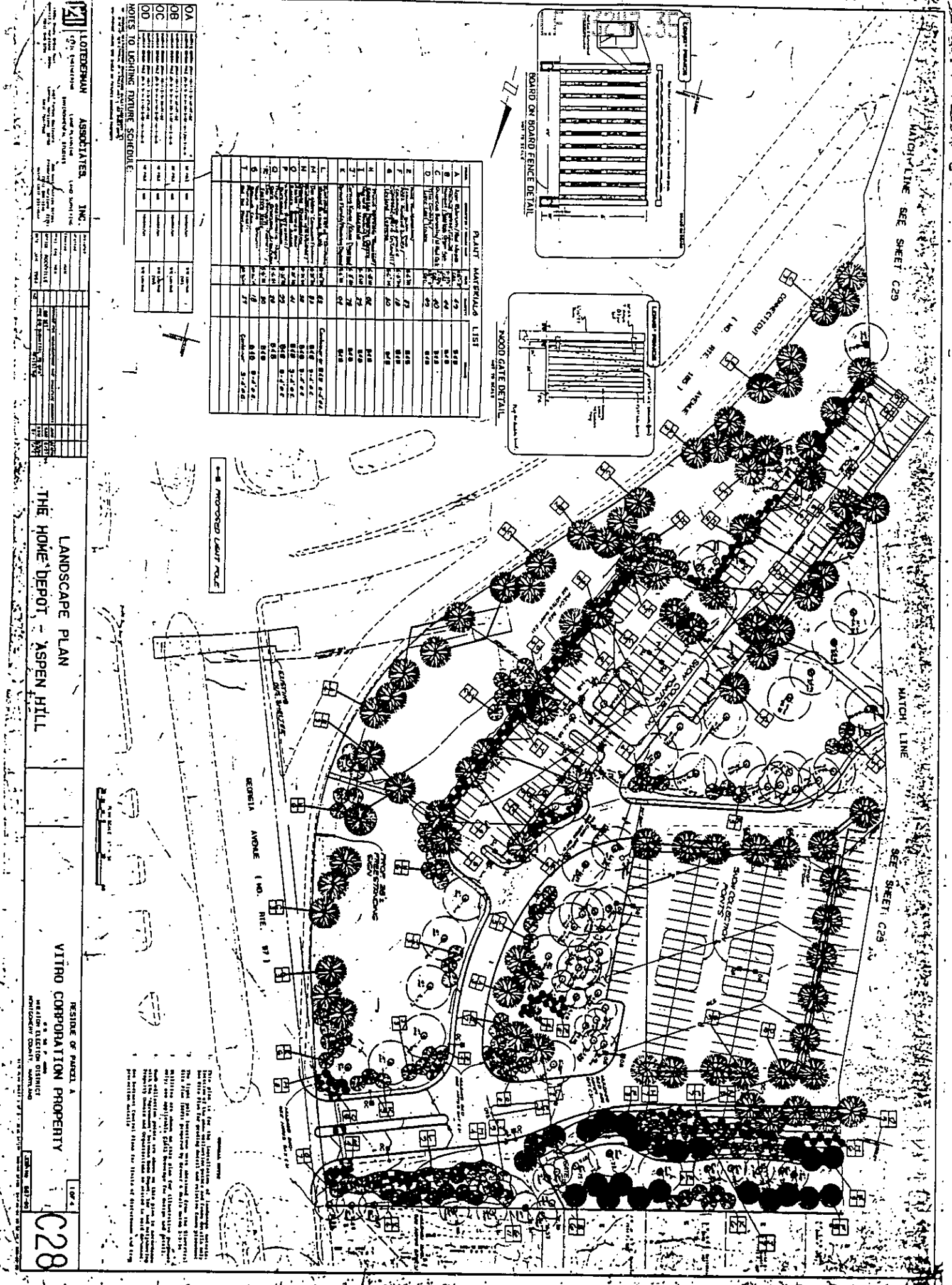
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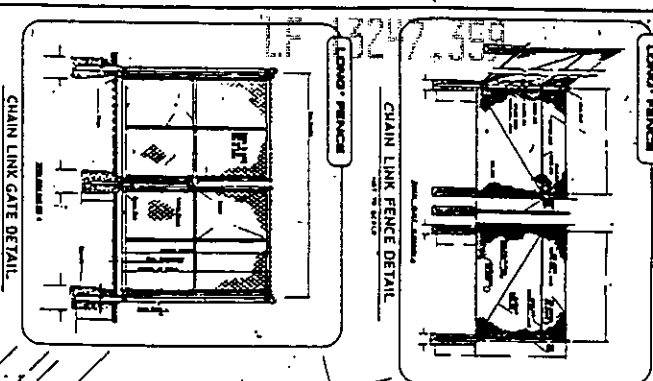
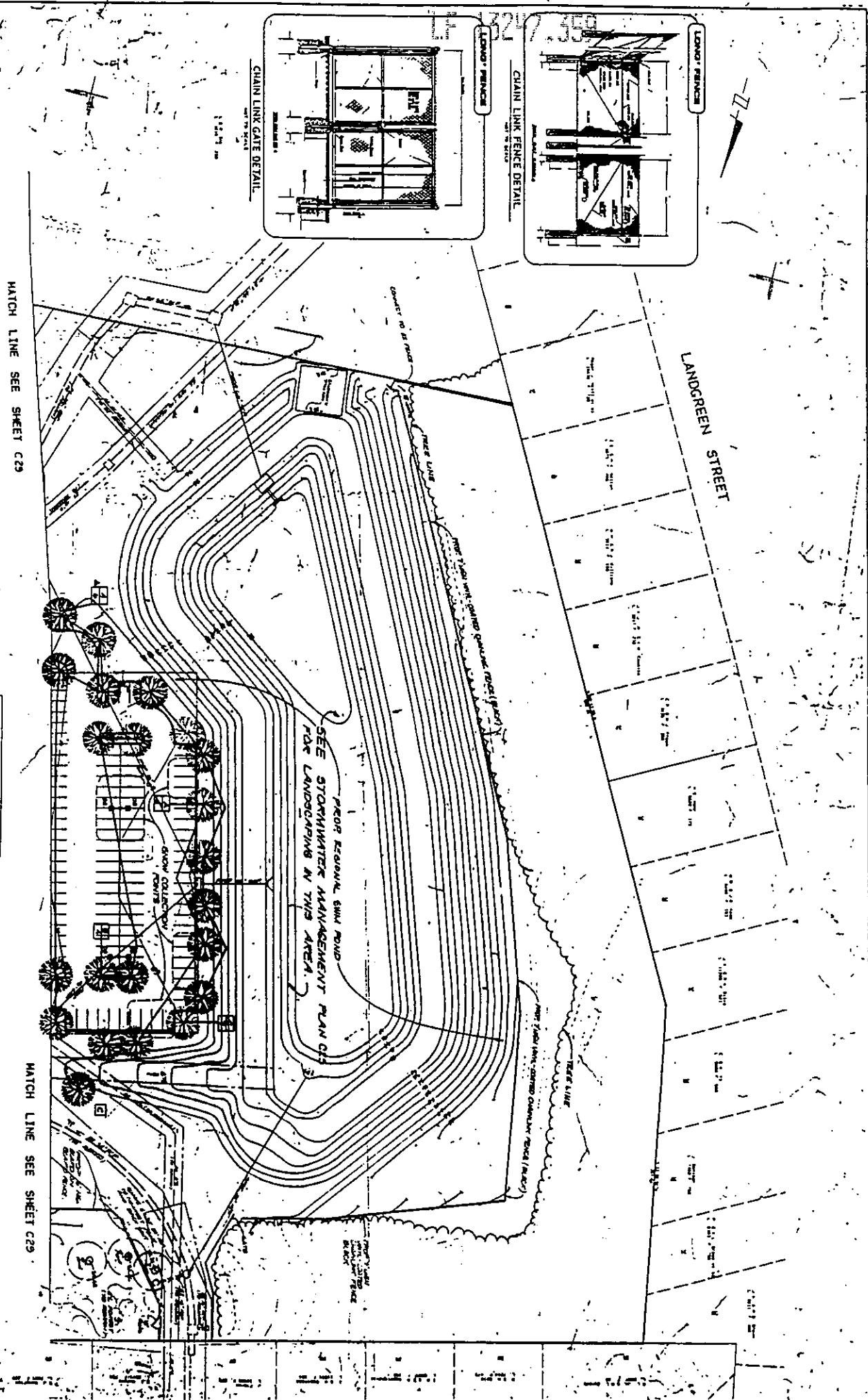
LF 13247.356



LOTERBERMAN ASSOCIATES, INC. 1400 N. 10th Street Suite 100 Lincoln, NE 68502 Phone: (402) 441-1111 Fax: (402) 441-1112 E-Mail: info@loterberman.com		LANDSCAPING PLAN 1-13-23 1-13-23	
PROJECT INFORMATION PROJECT NAME: VITRO CORPORATION PROPERTY PROJECT ADDRESS: 1100E DEPOT PROJECT CITY: LINCOLN, NE PROJECT STATE: NE PROJECT ZIP: 68502 PROJECT CLIENT: VITRO CORPORATION PROJECT ARCHITECT: [blank] PROJECT ENGINEER: [blank] PROJECT LANDSCAPE ARCHITECT: [blank]		DATE 1-13-23 1-13-23	
SCALE 1" = 20'		DATE 1-13-23 1-13-23	
PROJECT LOCATION 1100E DEPOT LINCOLN, NE 68502		DATE 1-13-23 1-13-23	
PROJECT DESCRIPTION LANDSCAPING PLAN		DATE 1-13-23 1-13-23	
PROJECT STATUS PRELIMINARY		DATE 1-13-23 1-13-23	
PROJECT NOTES 1. ALL PLANTING TO BE DONE BY THE LANDSCAPE ARCHITECT. 2. ALL PLANTING TO BE DONE BY THE LANDSCAPE ARCHITECT. 3. ALL PLANTING TO BE DONE BY THE LANDSCAPE ARCHITECT.		DATE 1-13-23 1-13-23	

C25





LOEBERMAN ASSOCIATES, INC. 1715 Pennsylvania Avenue, N.W. Washington, D.C. 20006 Phone: (202) 331-1100 Fax: (202) 331-1101 E-mail: info@loeberman.com		LANDSCAPE PLAN THE HOME DEPOT - ASPEN HILL		VITRO CORPORATION PROPERTY RESIDE OF PARCEL A 1.2 ACRES NORTHWEST COUNTY, MARYLAND	
PROJECT INFORMATION Project Name: THE HOME DEPOT - ASPEN HILL Project Location: NORTHWEST COUNTY, MARYLAND Project Number: C30 Project Date: 10/1/2010		DESIGNER INFORMATION Designer: LOEBERMAN ASSOCIATES, INC. Designer Address: 1715 Pennsylvania Avenue, N.W. Designer Phone: (202) 331-1100 Designer Fax: (202) 331-1101 Designer E-mail: info@loeberman.com		CLIENT INFORMATION Client: VITRO CORPORATION Client Address: 10000 VITRO DRIVE Client Phone: (410) 326-1100 Client Fax: (410) 326-1101 Client E-mail: info@vitro.com	

1

- ## APPARATUS AND MATERIALS

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- ### PROCEDURE FOR BRACING THESE

— Looking forward to it as well

- 1.
- anti B - positive**

- 附錄

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- ## ROUTING PROCEDURES FOR GROUND COVER

Keywords: *depression, anxiety, self-esteem, self-efficacy, coping strategies, social support*

- 1. PERSONAL DATA**

1. **Definition of the Problem**

- [illegible]

the fact that the *in vitro* results are in good agreement with the *in vivo* results.

- ## ROUTING PROCEDURES FOR THE

INDEX

- THREE PLANTING DETAIL - EVERGREEN TREES**

146

- ### STRAUS PLAYING DETAIL

100

- on the day

- 31

GENERAL CONDITIONS

1. The Contractor shall be responsible for obtaining all necessary permits and licenses for the work.
2. The Contractor shall be responsible for the safety of all workers and the public.
3. The Contractor shall be responsible for the protection of all existing utilities and structures.
4. The Contractor shall be responsible for the removal and disposal of all debris and waste.
5. The Contractor shall be responsible for the maintenance of all access roads and paths.
6. The Contractor shall be responsible for the protection of all trees and vegetation to remain.
7. The Contractor shall be responsible for the installation of all irrigation systems.
8. The Contractor shall be responsible for the installation of all lighting systems.
9. The Contractor shall be responsible for the installation of all fences and barriers.
10. The Contractor shall be responsible for the installation of all signs and markers.
11. The Contractor shall be responsible for the installation of all drainage systems.
12. The Contractor shall be responsible for the installation of all retaining walls.
13. The Contractor shall be responsible for the installation of all retaining structures.
14. The Contractor shall be responsible for the installation of all retaining walls.
15. The Contractor shall be responsible for the installation of all retaining structures.

13247 36

PLANT MATERIALS

1. All plant materials shall be of the highest quality and shall be free from disease and insect damage.
2. All plant materials shall be of the appropriate size and quantity for the work.
3. All plant materials shall be of the appropriate species and variety for the work.
4. All plant materials shall be of the appropriate size and quantity for the work.
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14. All plant materials shall be of the appropriate size and quantity for the work.
15. All plant materials shall be of the appropriate species and variety for the work.

PROCEDURE FOR PLACING TIES

1. The Contractor shall be responsible for the placement of all ties.
2. The Contractor shall be responsible for the placement of all ties.
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PROJECTS

1. The Contractor shall be responsible for the completion of all projects.
2. The Contractor shall be responsible for the completion of all projects.
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PLANTING PROCEDURES FOR GROUND COVER

1. The Contractor shall be responsible for the planting of all ground cover.
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15. The Contractor shall be responsible for the planting of all ground cover.

PLANTING PROCEDURES FOR SHRUBS

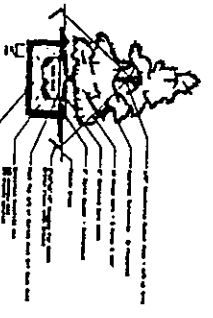
1. The Contractor shall be responsible for the planting of all shrubs.
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PLANTING PROCEDURES FOR TREES

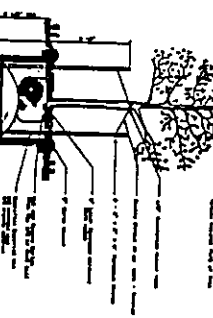
1. The Contractor shall be responsible for the planting of all trees.
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LANDSCAPING NOTES AND DETAILS

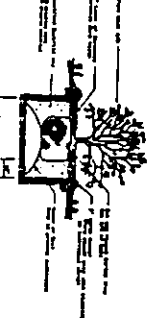
PLANT SPECIES		PLANT SIZE		PLANT QUANTITY	
PLANT SPECIES	PLANT SIZE	PLANT QUANTITY	PLANT SPECIES	PLANT SIZE	PLANT QUANTITY
1. Tree	12" DBH	10	2. Tree	12" DBH	10
3. Tree	12" DBH	10	4. Tree	12" DBH	10
5. Tree	12" DBH	10	6. Tree	12" DBH	10
7. Tree	12" DBH	10	8. Tree	12" DBH	10
9. Tree	12" DBH	10	10. Tree	12" DBH	10
11. Tree	12" DBH	10	12. Tree	12" DBH	10
13. Tree	12" DBH	10	14. Tree	12" DBH	10
15. Tree	12" DBH	10	16. Tree	12" DBH	10
17. Tree	12" DBH	10	18. Tree	12" DBH	10
19. Tree	12" DBH	10	20. Tree	12" DBH	10
21. Tree	12" DBH	10	22. Tree	12" DBH	10
23. Tree	12" DBH	10	24. Tree	12" DBH	10
25. Tree	12" DBH	10	26. Tree	12" DBH	10
27. Tree	12" DBH	10	28. Tree	12" DBH	10
29. Tree	12" DBH	10	30. Tree	12" DBH	10
31. Tree	12" DBH	10	32. Tree	12" DBH	10
33. Tree	12" DBH	10	34. Tree	12" DBH	10
35. Tree	12" DBH	10	36. Tree	12" DBH	10
37. Tree	12" DBH	10	38. Tree	12" DBH	10
39. Tree	12" DBH	10	40. Tree	12" DBH	10
41. Tree	12" DBH	10	42. Tree	12" DBH	10
43. Tree	12" DBH	10	44. Tree	12" DBH	10
45. Tree	12" DBH	10	46. Tree	12" DBH	10
47. Tree	12" DBH	10	48. Tree	12" DBH	10
49. Tree	12" DBH	10	50. Tree	12" DBH	10
51. Tree	12" DBH	10	52. Tree	12" DBH	10
53. Tree	12" DBH	10	54. Tree	12" DBH	10
55. Tree	12" DBH	10	56. Tree	12" DBH	10
57. Tree	12" DBH	10	58. Tree	12" DBH	10
59. Tree	12" DBH	10	60. Tree	12" DBH	10
61. Tree	12" DBH	10	62. Tree	12" DBH	10
63. Tree	12" DBH	10	64. Tree	12" DBH	10
65. Tree	12" DBH	10	66. Tree	12" DBH	10
67. Tree	12" DBH	10	68. Tree	12" DBH	10
69. Tree	12" DBH	10	70. Tree	12" DBH	10
71. Tree	12" DBH	10	72. Tree	12" DBH	10
73. Tree	12" DBH	10	74. Tree	12" DBH	10
75. Tree	12" DBH	10	76. Tree	12" DBH	10
77. Tree	12" DBH	10	78. Tree	12" DBH	10
79. Tree	12" DBH	10	80. Tree	12" DBH	10
81. Tree	12" DBH	10	82. Tree	12" DBH	10
83. Tree	12" DBH	10	84. Tree	12" DBH	10
85. Tree	12" DBH	10	86. Tree	12" DBH	10
87. Tree	12" DBH	10	88. Tree	12" DBH	10
89. Tree	12" DBH	10	90. Tree	12" DBH	10
91. Tree	12" DBH	10	92. Tree	12" DBH	10
93. Tree	12" DBH	10	94. Tree	12" DBH	10
95. Tree	12" DBH	10	96. Tree	12" DBH	10
97. Tree	12" DBH	10	98. Tree	12" DBH	10
99. Tree	12" DBH	10	100. Tree	12" DBH	10



TREE PLANTING DETAIL - EVERGREEN TREE



TREE PLANTING DETAIL



SHRUB PLANTING DETAIL



HERBACEOUS PLANTING DETAIL



HERBACEOUS PLANTING DETAIL

JOE BERNARD ASSOCIATES, INC.
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 462-1100
Fax: (202) 462-1101

DATE	BY	REVISION
10/1/88	JOB	1
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10/1/88	JOB	3
10/1/88	JOB	4
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10/1/88	JOB	98
10/1/88	JOB	99
10/1/88	JOB	100

LANDSCAPING NOTES AND DETAILS



VITTO CORPORATION PROPERTY
HOME DEPOT
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 462-1100
Fax: (202) 462-1101

Sheet 6 of 8
C26

This is to certify that this instrument has been prepared under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Cindy Bar

Attorney

Cindy Bar

masters\re\deeds
feesmpl

PLEASE RETURN TO:
LERCH, EARLY & BREWER
3 Bethesda Metro Center, Suite 380
Bethesda, Maryland 20814-5367

Attn:

Cindy Bar

42238.001

AGREEMENT

This Agreement is made as of the 16TH day of SEPTEMBER 1994, between The Home Depot, U.S.A., Inc. ("Home Depot"), the Aspen Hill Civic Association, the Layhill Alliance, and certain additional Neighboring Property Owners (the Neighbors) who are signatories hereto. The owners of the following lots who agree to the terms of this Agreement, and who agree to be bound by it, shall have the right until forty-five days after the date of this Agreement to become parties by executing this Agreement:

English Manor subdivision, Block 1, Lots 10-37
English Manor subdivision, Block 2, Lots 14-27
Wheaton Woods subdivision, Block 43, Lots 17, 18, 30-40, 57
Wheaton Woods subdivision, Block 38, Lots 15-23

The subsequent owner of each of these lots who purchases a lot from a party to this Agreement shall have the right to become a party by notifying Home Depot and executing this Agreement within ninety (90) days of recording the deed for such purchase.

Home Depot has entered into a contract to purchase the Vitro site (Parcel A and Outlot A as shown on a plat entitled Vitro Corporation Property recorded on September 25, 1956 at Plat Book 58, Plat 4689, in the Land Records of Montgomery County, Maryland, less any portion conveyed or dedicated, in fee simple or by easement, to government authorities for public use).

Home Depot has met with the neighboring property owners and representatives of the Aspen Hill Civic Association, the Aspen Hill Master Plan Citizens Advisory Committee, and the Layhill Alliance, and with them has developed a plan for the redevelopment of the Vitro site which would limit the use of the property to a single Home Depot store, coupled with a substantial reduction of the parking spaces, and an enhancement of the landscaping and buffering, all as shown in more detail on Home Depot's final construction plan (the "Plan"), which is Attachment 1, Exhibit A (19 pages) of this Agreement, and which shall be in substantial conformance with the revised development plan displayed to the neighbors by Home Depot at the December 16, 1993, community meeting at Vitro. The Plan will include:

1. the height and location of the building and all outdoor signage;
2. a plant list (including the size of plants to be used);
3. planting specifications (including method of planting and location);
4. detailed grading, landscape, stormwater management, and sediment control plans ((including swales, drains, etc. to deal with drainage off the buffer area (including

problems caused by diking), as well as drainage problems currently caused by the parking lot; the grading plan will also show the drainage into the stormwater management pond));

5. catalogue cuts for exterior light fixtures;
6. height and field of coverage of exterior lights;
7. specification that the generator will only be used in emergencies (or when required for maintenance or testing);
8. location, height, and type of fencing (including the general location of all gates in the fencing; all gates will have provision for locks, although various entry arrangements will vary with individual abutting home owners and their successors); and
9. snow collection points for snow plowing which will be located on the parking lot, along the second tier of light poles in from the edge of the lot.

In consideration of the mutual promises and agreements contained in this Agreement, the parties agree as follows:

1. The Neighbors, the Aspen Hill Civic Association, and the Layhill Alliance agree to support Home Depot's 1994 applications for any and all governmental approvals of its development (and oppose, at the sole and exclusive cost of Home Depot, any appeal filed against such approvals) provided that such applications are (i) in accordance with the Plan, and (ii) consistent with the terms of the covenant (Attachment 1 of this Agreement), and (iii) are consistent with the Aspen Hill Master Plan as approved by the Montgomery County Council March 29, 1994.

2. Home Depot agrees that:

(a) prior to the initiation of construction of its new store, it will cause to be recorded in the Land Records of Montgomery County the Covenant contained in Attachment 1 of this Agreement.

(b) upon receipt of appropriate documentation, it will reimburse the Aspen Hill Civic Association for the cost of up to two hours of time from an attorney (designated by the Civic Association) to review this Agreement.

(c) prior to the recording of the Covenant, Home Depot will provide the Aspen Hill Civic Association with a copy of the proposed maintenance program for plants and grounds (including replacement of dead or diseased plants) on the Site. The Aspen

Hill Civic Association will provide Home Depot with any recommendations for changes that the Civic Association may have within thirty days of receipt of the proposed maintenance program. Home Depot will, to the extent financially reasonable and practicable, adopt the changes recommended by the Civic Association. Home Depot will follow the same practice of allowing the Civic Association thirty days to comment and (to the extent financially reasonable and practicable) adopting the recommendations of the Civic Association, on all future changes to the maintenance program.

(d) prior to the recording of the Covenant, Home Depot will provide the Civic Association with a copy of Home Depot's Standard Operating Procedures (the "Procedures") for dealing with hazardous materials spills, including pesticides. Home Depot will notify the Aspen Hill Civic Association of any changes to the Procedures no later than thirty days after the changes take effect.

Witness:

The Home Depot, U.S.A., Inc.,

Jacque LeBlond

By:

A. M. Litt

A. M. Litt

Sr Corporate Counsel-Real Estate

The Aspen Hill Civic Association

Michael Beideman
Michael Beideman

By:

E. C. L. L.
E. C. L. L.

The Layhill Alliance

Michael Beideman
Michael Beideman

By:

Janice W. McLean
Janice W. McLean

Neighboring Property Owners:

ENGLISH MANOR/BLK 1
Subdivision/Lot No.

Nancy L. Zareva
Signatures

NANCY L. ZAREVA

Printed Names

4208 Southend Rd.

Address

English Manor / 16, Blk 1 Sharon A. Matsui
Subdivision/Lot No. Signatures

SHARON A. MATSUI
Printed Names

4008 Southend Rd
Address

English Manor / 11, Blk 1 Harold V. Wilson
Subdivision/Lot No. Signatures

Harold V. Wilson
Printed Names

14001 London Lane
Address

English Manor / 17, Blk 1 Roger Weaver
Subdivision/Lot No. Signatures

ROGER WEAVER
Printed Names

4010 Southend Rd
Address

English Manor / 16, Blk 2 Lawrence A. Meinberg
Subdivision/Lot No. Signatures

LAWRENCE MEINBERG
Printed Names

4003 Southend Rd.
Address

English Manor / 30, Blk 1 Martin Gold
Subdivision/Lot No. Signatures

Martin Gold
Printed Names

4206 Southend Road
Address

English Manor / Blk 1 LOT 21
Subdivision/Lot No.

Thomas J. McIntyre
SIGNATURES
THOMAS J. MCINTYRE
PRINTED NAME

ADDRESS
4104 Southend Rd.

Michelle D. Stillion

MICHELLE STILLION

Lorraine E. Meinberg

Dan Mucken

DAN MUCKENHORN

4104 Southend Rd

(including gate near garage, as negotiated).

ENGLISH MANOR, BLK 1, Lot 36

Subdivision/Lot No. Signatures

Percy Edward Goody
Printed Names

4203 Southend Rd.
Address Rockville 20853

Madonna K Goody

Madonna K. Goody

~~Subdivision/Lot No. Signatures~~

~~Printed Names~~

~~Address~~

~~Subdivision/Lot No. Signatures~~

~~Printed Names~~

~~Address~~

~~Subdivision/Lot No. Signatures~~

~~Printed Names~~

~~Address~~

~~Subdivision/Lot No. Signatures~~

~~Printed Names~~

~~Address~~

English Manor Blk 2 ^{Lot 229}
Subdivision/Lot No. Signatures

Joseph Gezelter
Printed Names

4103 Southend Rd
Address

Diane K. Gezelter

Diane K. Gezelter

4103 Southend Rd.

ENGLISH MANOR / ^{Block 1} 32
Subdivision/Lot No. Signatures

JEAN E. HOCKMAN
Printed Names

4210 SOUTHERND RD.
Address

ENGLISH MANOR / ^{Block 1} 18
Subdivision/Lot No. Signatures

THOMAS W. EICHLER
Printed Names

4012 SOUTHERND RD.
Address

ENGLISH MANOR / ^{Block 2} 17
Subdivision/Lot No. Signatures

WILSON D. EIMER
Printed Names

4005 SOUTHERND RD
Address

Marguerite B. Eimer

MARGUERITE B. EIMER

4005 SOUTHERND RD

ENGLISH MANOR / ^{Block 1} 29
Subdivision/Lot No. Signatures

IZET M. KAPETANOVIC
Printed Names

4204 SOUTHERND RD
Address

Terri Rauba Kapetanovic

Terri Rauba KAPETANOVIC

4204 Southend Rd

Block 43

-7-

Wheaton Woods 37
Subdivision/Lot No.

Charles P. Froom
Signatures

Charles P. Froom
Printed Names

4210 Landgreen Street
Address

Marilyn J. Froom

Marilyn J. Froom

Rockville, Md. 20853-2730

^{Block 43}
Wheaton Woods 38
Subdivision/Lot No.

Joseph J. Cammisia
Signatures

Joseph J. Cammisia
Printed Names

4212 Landgreen St.
Address

Kathryn M. Cammisia

Kathryn M. Cammisia

Rockville, MD. 20853

^{Block 43}
Wheaton Woods 32
Subdivision/Lot No.

[Signature]
Signatures

JACQUES BENJAN
Printed Names

4200 LANDGREEN ST
Address

Rockville, MD. 20853

^{Block 43}
Wheaton Woods 57
Subdivision/Lot No.

Roger J. Neill
Signatures

ROGER J. NEILL
Printed Names

4218 LANDGREEN ST
Address

Sylvia S. Kihara

SYLVIA S. KIHARA

Rockville, MD 20853

⁴³
Wheaton Woods 39
Subdivision/Lot No.

W.H. Williams
Signatures

W.H. Williams
Printed Names

4214 Landgreen St.
Address

Mary Jane Williams

M. J. Williams

4214 Landgreen St

Wheaton Woods 36
Subdivision/Lot No.

John H. Mohr
Signatures

JOHN H. MOHR
Printed Names

4208 Landgreen St.
Address

Harriette S. Mohr

Harriette S. Mohr

4208 Landgreen St

* 7a

ENGLI BK1 LT25 Buang Wendrich
Subdivision/Lot No. Signatures

BRIAN J. WENDRICH
Printed Names

4112 SOUTHEND RD.
Address

English Manor-BLK-1-LT-15 [Signature]
Subdivision/Lot No. Signatures

Alberto F. López
Printed Names

4006 Southend Rd
Address

Amelia B. López

4006 Southend Rd.

English Manor BLK-1-LT-19
Subdivision/Lot No. Signatures

Jean-M. Denis
Printed Names

4100 Spend Rd
Address

J. Denis

ENGLISH MANOR BLK-1-LT20 Robert Adams
Subdivision/Lot No. Signatures

ROBERT ADAMS
Printed Names

4102 SOUTHEND RD
Address

English Manor BLK-1 LT 23 Barbara B. Dunbar
Subdivision/Lot No. Signatures

4108 Southend Rd
Printed Names

Barbara B. Dunbar
Address

English Manor BLK-1 LT 14 [Signature]
Subdivision/Lot No. Signatures

Parvaneh H. Moossavian-Yousefi
Printed Names
4004 Southend Rd
Address

[Signature]
MEHDI YOUSEFI

4-76

Wheaton Woods 35 Saoda Choudhury
Subdivision/Lot No. Signatures

SAODA CHOUDHURY
Printed Names

4206 Landgreen st
Address

Rockville MD. 20853

Wheaton Woods 31 Ann Gross
Subdivision/Lot No. Signatures

Ann Gross
Printed Names

4114 Landgreen St.
Address

Paul Gross

Paul Gross

Rockville, MD 20853

Wheaton Woods 30 Joseph A. Brown
Subdivision/Lot No. Signatures

JOSEPH A. BROWN
Printed Names

4112 LANDGREEN ST.
Address

Marilyn Brown

MARILYN BROWN

ROCKVILLE, MD. 20853

Wheaton Woods 40 Hallie Melton
Subdivision/Lot No. Signatures

Mrs. Hallie Melton
Printed Names

4216 Landgreen St.
Address

Rockville, MD 20853

Wheaton Woods 34 Julio A. Silva
Subdivision/Lot No. Signatures

JULIO A. SILVA
Printed Names

4204 LANDGREEN ST
Address

ROCKVILLE MD 20853.

Wheaton Woods 33 Kyungmi Yi
Subdivision/Lot No. Signatures

Kyungmi Yi
Printed Names

4202 Landgreen St.
Address

Rockville MD 20853

ENGLISH MANOR/Blk-1/L-26

Subdivision/Lot No. Signatures

German Aguilar
Printed Names

Ana V. Aguilar

Ana V. Aguilar

4114 Southend Rd. - Rockville, Md. 20853
Address

ENGLISH MANOR

Block 1 Lot 37

Subdivision/Lot No. Signatures

George J Marshall
Printed Names

4201 Southend Rd
Address

English Manor, Blk 2, Lot 20

Subdivision/Lot No. Signatures

Albert Lookhart
Printed Names

4011 Southend Ad
Address

English Manor, Blk 2, Lot 19

Subdivision/Lot No. Signatures

Chong Tae chin
Printed Names

4009 Southend
Address

ENGLISH MANOR BLK 1 LOT 28

Subdivision/Lot No. Signatures

ANTONIO ESPINOSA
Printed Names

4202 SOUTHEND RD ROCKVILLE MD. 20853
Address

English Manor BLK 1 LOT 27

Subdivision/Lot No. Signatures

Juan Flores
Printed Names

4200 Southend Rd. Rockville MD 20853
Address

* 7 d

Hill Civic Association will provide Home Depot with any recommendations for changes that the Civic Association may have within thirty days of receipt of the proposed maintenance program. Home Depot will, to the extent financially reasonable and practicable, adopt the changes recommended by the Civic Association. Home Depot will follow the same practice of allowing the Civic Association thirty days to comment and (to the extent financially reasonable and practicable) adopting the recommendations of the Civic Association, on all future changes to the maintenance program.

(d) prior to the recording of the Covenant, Home Depot will provide the Civic Association with a copy of Home Depot's Standard Operating Procedures (the "Procedures") for dealing with hazardous materials spills, including pesticides. Home Depot will notify the Aspen Hill Civic Association of any changes to the Procedures no later than thirty days after the changes take effect.

Witness:

The Home Depot, U.S.A., Inc.,

By: _____

The Aspen Hill Civic Association

By: _____

The Layhill Alliance

By: _____

Neighboring Property Owners:

115 - 24 Elizabeth C.
Subdivision/Lot No. Signatures

Freitag

ELIZABETH C.
Printed Names

FREITAG

4107 Southend Rd. Rockville, Md. 20853
Address

115 - 24 Donald A Freitag
Subdivision/Lot No. Signatures

DONALD A FREITAG
Printed Names

4107 Southend Rd. Rockville, Md 20853
Address

BLK 1
ENGLISH MANOR LOT 10 Bernice Cesare 14003 London Lane
Subdivision/Lot No. Signatures Rockville MD 20853

Bernice Cesare
Printed Names

Address

ENGLISH MANOR/BLK 2 LOT 21
Subdivision/Lot No. Signatures

Fabian Garcia
Printed Names

4101 Southend Rd
Address

ENGLISH MANOR/BLK 2 LOT 23
Subdivision/Lot No. Signatures

H Laessle Taylor H. LAESSLE TAYLOR
Printed Names

4105 SOUTHEND RD
Address

ENGLISH MANOR/BLK 1 LOT 24 Christina L. Taylor
Subdivision/Lot No. Signatures

CHRISTINA L. TAYLOR
Printed Names

4110 Southend Rd.
Address

-8-

ATTACHMENT 1

THIS Declaration of Covenants (the "Covenants"), made this 7TH day of NOVEMBER, 1994, by The Home Depot, U.S.A., Inc. ("Home Depot"), owner of Parcel A and Outlot A as shown on a plat entitled Vitro Corporation Property recorded on September 25, 1956 at Plat Book 58, Plat 4689, in the Land Records of Montgomery County, Maryland, less any portion conveyed or dedicated, in fee simple or by easement, to government authorities for public use (hereafter the "Site").

WHEREAS, for the purpose of maintaining good relations with the surrounding community, Home Depot has entered into an agreement (the "Agreement") dated SEPTEMBER 16, 1994, between itself, the Aspen Hill Civic Association, the Layhill Alliance, and certain Neighboring Home Owners, whose names and lot numbers are attached to these Covenants as Exhibit B; and

WHEREAS, the covenants and restrictions hereinafter set forth have been duly adopted after careful consideration by the present owner of said Site as those to be imposed by this instrument as aforesaid.

NOW, THEREFORE, know all persons by these presents, that the said Home Depot does hereby establish and impose upon the Site the following protective restrictions and covenants to be (1) observed by whosoever, within the term hereof, owns a current or future interest in all or part of the Site (the "Owner"), and (2) enforced by such persons as are specified by these covenants.

1. For a period of twenty (20) years from the date hereof, and as long thereafter as Home Depot occupies the Site as a Home Depot store,

- (a) No development will occur on the Site which is not strictly in accordance with the plan contained in Exhibit A of these Covenants (the "Plan").
- (b) The residents of the Aspen Hill Planning Area will be allowed to sled at their own risk in the area indicated on Exhibit A of these Covenants, whenever it is covered with snow and/or ice. Sledding may be controlled by Home Depot to the degree necessary to keep it from interfering, unreasonably, with store operations. Permission for such recreational use is granted in accordance with the provisions of the Annotated Code of Maryland, Natural Resources Volume, Section 5-1101 et seq., and may be revoked or amended by appropriate posting in the event that such law is substantially amended or repealed.

- (c) Any tree (1) which is shown on the Plan and planted by the Owner, or (2) which is shown on the Plan outside of the Landgreen Wooded Area (the existing tree area along the west side of the property up to 4200 Southend Road, as shown on Exhibit A), that dies will be replaced with a tree of similar species in accordance with the following table of sizes:

shade trees: 2½ to 3 inch caliper
flowering trees: 1 to 1½ inch caliper and a
minimum height of 6 to 8 feet
evergreen trees: minimum height of 6 to 8
feet
shrubs: minimum of 24 to 30 inches height and
or spread

The Landgreen Wooded Area is excluded from the tree replacement requirements because it is agreed by all parties to be an existing woodland which has its own rejuvenation cycle, and which is best left in its natural state.

The Owner will take no actions to harm any of the following trees that currently exist on the Site:

- (1) 33" red oak behind 4204 Landgreen;
- (2) 32" beech behind 4206 Landgreen;
- (3) 52" white oak behind 4218 Landgreen;
- (4) 41" red oak behind 4200 Southend;
- (5) 37" red oak behind 4204 Southend;
- (6) 29" tulip poplar behind 4204 Southend; and
- (7) 31" white oak behind 4208 Southend.

- (d) Entrances will be prominently posted with signage directing that all trucks over 5,000 pounds gross volume weight will only be permitted to enter the Site through the Connecticut Avenue entrance. All unloading of delivery trucks (except loading and unloading of lumber/building materials at the rear lumber door, or garden materials along side of the garden center) will take place within delivery seals at the loading docks.
- (e) The Georgia Avenue entrance will be posted with a sign, located near the first driveway turnoff, indicating that the driveway turnoff leads to the store.
- (f) At such time as the State Highway Administration authorizes the placement of, and agrees to install, a traffic signal at the Georgia Avenue

entrance to the Site, the Owner will pay the Administration for the cost of the signal.

- (g) Garbage and trash will be picked up for removal from the Site only between 9:00 a.m. and 5:00 p.m. Integral compactor/container, loaded solely from the inside of the store only, will be used; it will be picked up from the loading dock, and physically removed by truck (not dumped).
- (h) The hours the store will be open for customers to enter the store will be as follows: on Mondays through Fridays, the store will open no earlier than 6:00 a.m. and close no later than 10:00 p.m.; on Saturdays it will open no earlier than 7:00 a.m. and close no later than 9:00 p.m.; on Sundays it will open no earlier than 8:00 a.m. and close no later than 8:00 p.m. All deliveries of goods will occur no earlier than 8:00 a.m. and no later than 8:00 p.m.
- (i) The parking lot will be designed to minimize light spillover off the lot.
- (j) In addition to any other obligations to maintain the premises, the Owner will (at least annually) conduct major maintenance (e.g. remove dead trees, fallen limbs and dead wood) on the grounds between the perimeter fence and the abutting properties. Owner agrees to perform such maintenance in a manner intended not to disturb the natural character of the woodlands and agrees not to otherwise use these grounds. In addition, the Owner, promptly upon receipt of notice by its store manager or assistant manager, will fix any clogged or malfunctioning drains or other hazardous conditions between the perimeter fence and the adjoining residential properties.
- (k) The Owner will police the grounds for trash (on the store side of the perimeter fence) at least once each day that the store is open for business.
- (l) The Owner has designed the Plan to discourage motorized access to the Site from Aspen Hill Road, via the Lee Development Group Property.
- (m) The owners of the abutting properties may enter the portion of the Site between their property line and the security fence and make such use of that portion of the Site as is not inconsistent

with the Owner's responsibilities under provisions 1(i) and 3 of this Covenant.

- (n) The wildflower meadow shown in the Plan will have no structures placed on it and will be mowed and maintained appropriately for a wildflower meadow.
- (o) No public access restaurant, cafeteria, or automat may be on the Site.
- (p) the emergency generator will only be used in emergencies, and occasionally for testing and required maintenance.

2. (a) Prior to the issuance of any Use and Occupancy Permit by Montgomery County, Maryland, the Owner will construct and/or install (as the case may be):

- (1) all berms as shown on the Plan;
- (2) all security fencing as shown on the Plan;
- (3) all landscaping, including the meadow, as shown on the Plan;
- (4) all replacement lighting as shown on the Plan;
- (5) the stormwater management system shown on the Plan.

In the event that construction or installation of any of the above five numbered items is temporarily delayed due to weather (such as planting during winter), or by governmental action (such as governmental expansion of the stormwater facility to handle water from areas in addition to the property), the requirements of this paragraph shall be deemed to be complied with if Home Depot enters into a fully prepaid contract for such construction or installation consistent with that shown on the Plan. Any work (other than that associated with the storm water management facility) that is so delayed will be completed within one year of occupancy, and all work associated with the storm water management facility will be completed within one year of final approval by the county of the final construction plans for the facility.

(b) Prior to the issuance of The Use and Occupancy Permit by Montgomery County, Maryland, the Owner will enter into Design Plan Compliance and Enforcement Agreement with the Montgomery County Planning Board in accordance with the the Aspen Hill Master Plan as approved by the Montgomery County Council March 29, 1994.

3. The Owner will maintain the building and grounds (including all berms, fencing, landscaping, lighting and stormwater management facilities) so that they are safe and operational.

4. The Owner may not permit or condone an application to be made to any governmental official or body for any land use on the Site that is not compatible with the the Aspen Hill Master Plan as approved by the Montgomery County Council March 29, 1994.

5. (a) Each of the following have standing to enforce this Covenant: (1) the Maryland-National Capital Park and Planning Commission; (2) the Aspen Hill Civic Association, or its successors; (3) the Layhill Alliance, or its successors; (4) Neighboring Home Owners who are parties to the Agreement;

(b) No legal action shall be brought to enforce these covenants until the Owner has been given written notice of the alleged violation and a reasonable time to cure such violation. In the event such an action is brought, the Court may award a reasonable amount to the plaintiff for court costs and fees actually paid by the Plaintiff, provided that the Court finds that the Defendant breached the Covenant, that the Plaintiff acted reasonably, necessarily, and in good faith in all respects, and that the Plaintiff took all steps appropriate under the circumstances to obtain relief short of instituting litigation.

(c) No failure on the part of any person(s) designated in item 5(a) to enforce any of these Covenants shall waive that person(s)' right to enforce any of these Covenants.

6. These Covenants are to run with the land and shall be binding for a period of twenty (20) years from the date hereof, and as long thereafter as Home Depot occupies the site as a Home Depot store, except that the Owner's covenant to construct no building or structure within the buffer area (the land shown on the Site Plan between the fence the abutting residential properties), to leave such buffer area in the condition shown on the Site Plan, to allow abutting residents the right to enter upon such buffer area, and the right of Parties to the Agreement to enforce such covenants as set forth herein, shall run with the land and shall continue to be binding on all future owners of the Site for as long after twenty years as any parties to the Agreement continue to own and reside in their homes; no amendment shall be binding or effective until it is recorded and signed jointly by:

(a) the Owner;

(b) Two-thirds of those Neighboring Property Owners who are Signatories to the Agreement and who, at the

time of the amendment, are owners and residents of properties which abut the Site, and

(c) The Aspen Hill Civic Association, or its successor.

7. Owner will identify the Site as being in "Aspen Hill, Maryland" or in "Aspen Hill," not in "Rockville," "Wheaton," or "Silver Spring." To the extent permissible by the U.S. Postal Service, the Owner will use "Aspen Hill" as the town designation of the Site's mailing address.

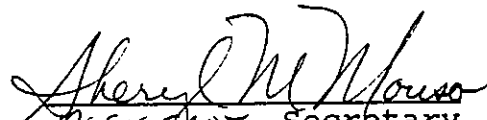
8. The Owner will make specific reference to these Covenants in a separate paragraph of any subsequent deed, sales contract, mortgage, or other legal instrument by which any interest in the Site is conveyed (including a lease agreement).

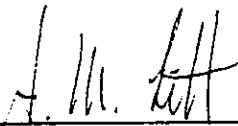
9. Home Depot will direct all contractors involved in construction or demolition on the Site that no truck over 5,000 pounds gross weight volume, when going to or from the Site, is to use any primary, secondary or tertiary residential street in the Aspen Hill Planning Area.

The foregoing Agreement is hereby accepted as of the date first above written.

ATTEST:

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


ASSISTANT, Secretary
[Corporate Seal]

By: 

A. M. Litt
Sr Corporate Counsel-Real Estate

EXHIBIT A

(Exhibit A will consist of the final Construction Plan, which will be in substantial conformity with the map shown by Home Depot at the December 16 community meeting at Vitro, with the following items added):

1. the height and location of the building and all signage;
2. a plant list (including the size of plants to be used);
3. planting specifications (including method of planting and location);
4. an area designated as appropriate for sledding;
5. detailed grading plans ((including swales, drains, etc. to deal with drainage off the buffer area (including problems caused by diking), as well as drainage problems currently caused by the parking lot; the grading plan will also show the drainage into the stormwater management pond));
6. catalogue cuts for exterior light fixtures;
7. height and field of coverage of exterior lights;
8. location, height, and type of fencing (including the location of all gates in the fencing).
9. snow removal plan (showing snow collection points).





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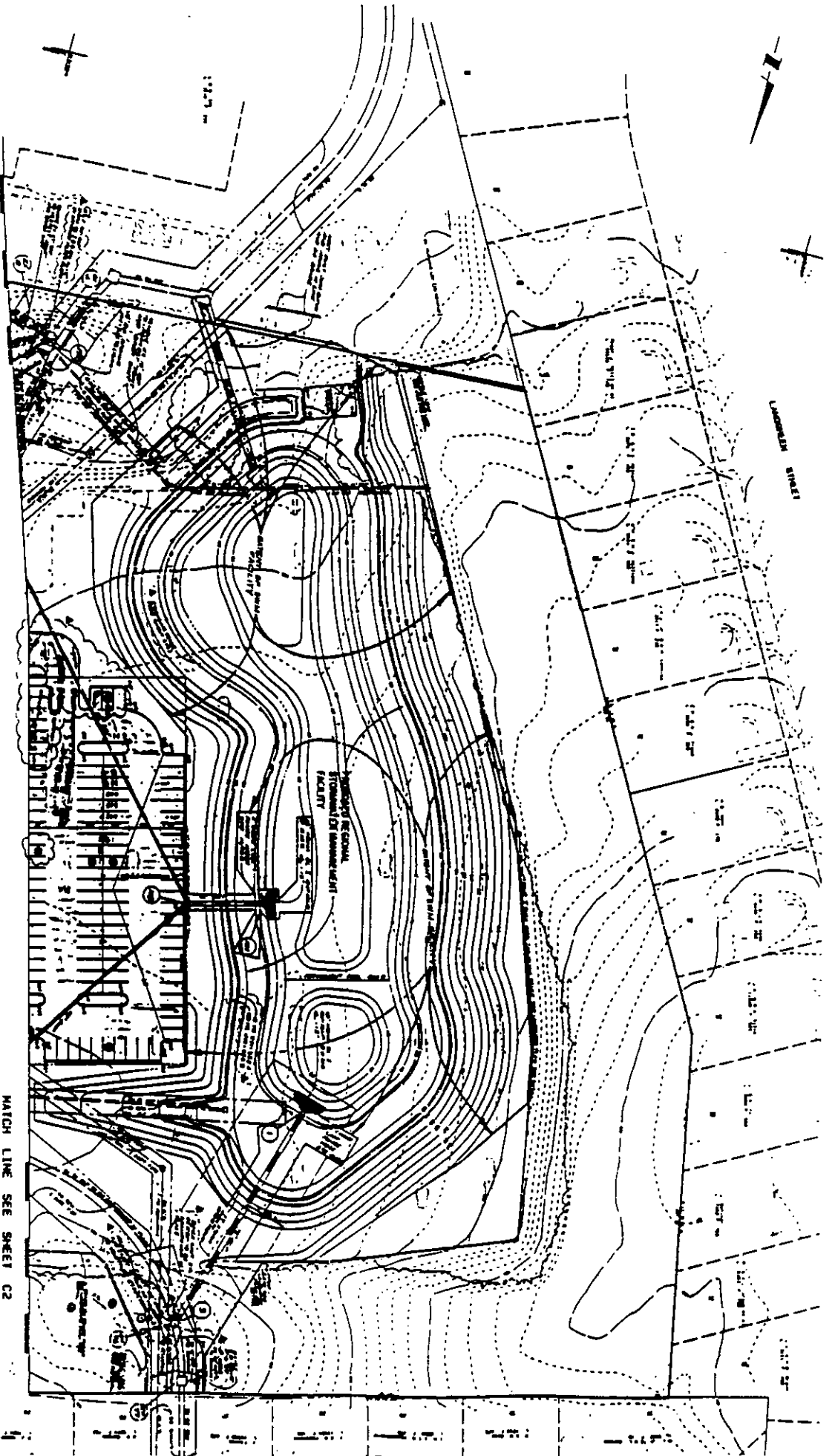
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 3. **Methodology**
 4. **Results**
 5. **Discussion**
 6. **Conclusion**
 7. **References**
 8. **Appendix**
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LIEDTBERG ASSOCIATES, INC.

SITE PLAN

ACTIVE & PASSIVE WITH CORPORATION PROPERTY

23






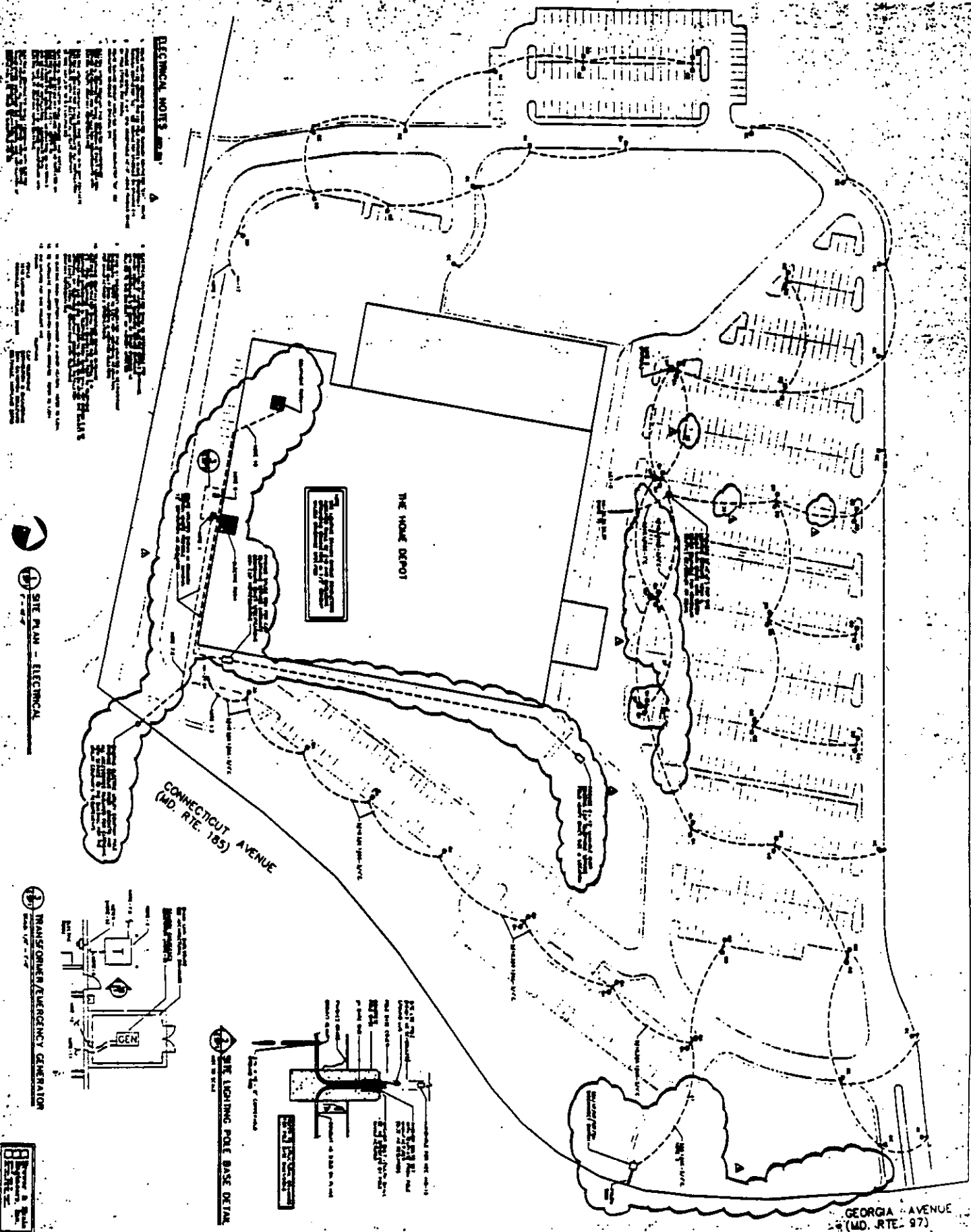
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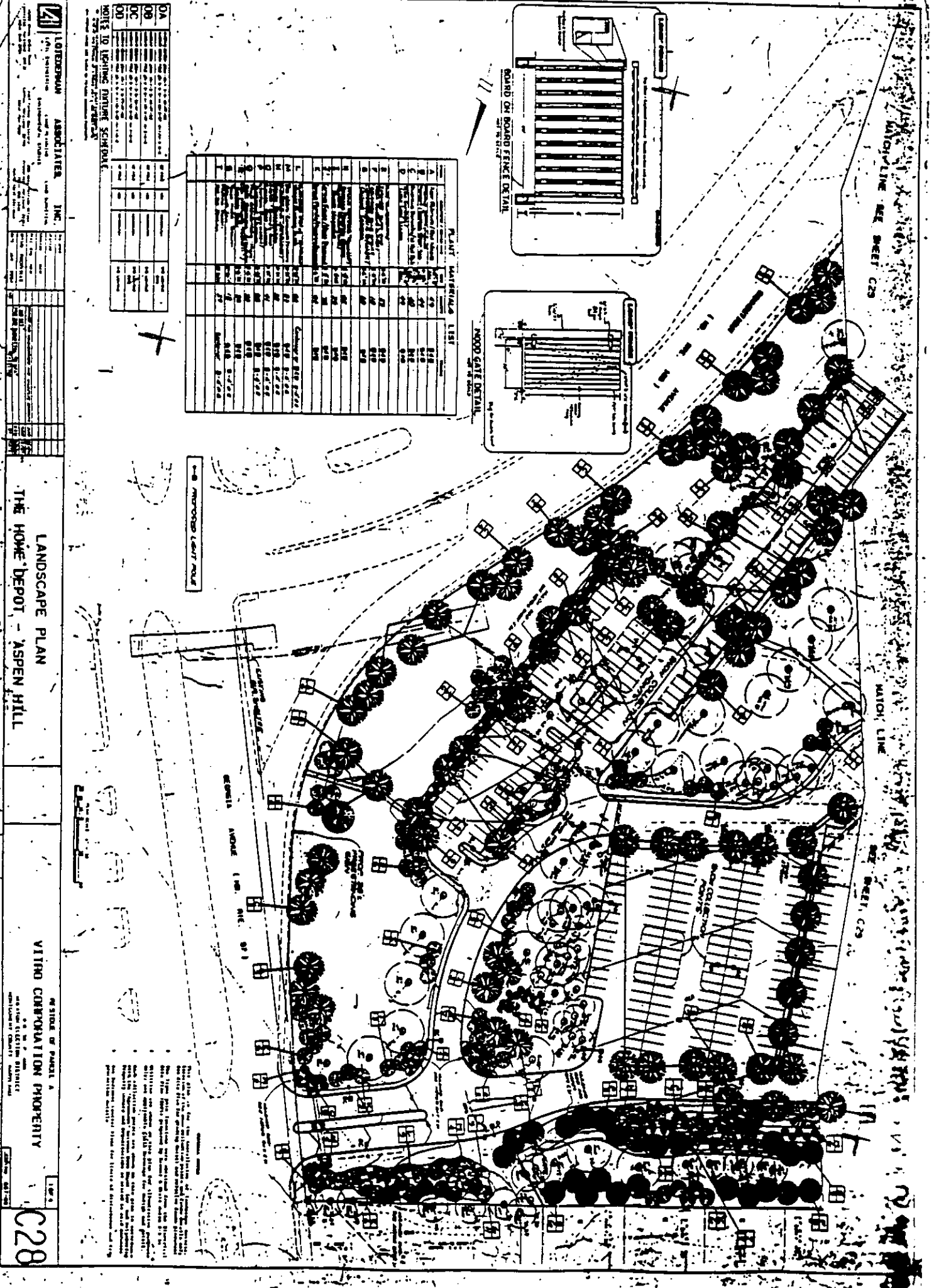
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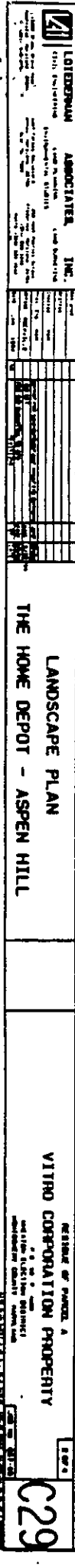
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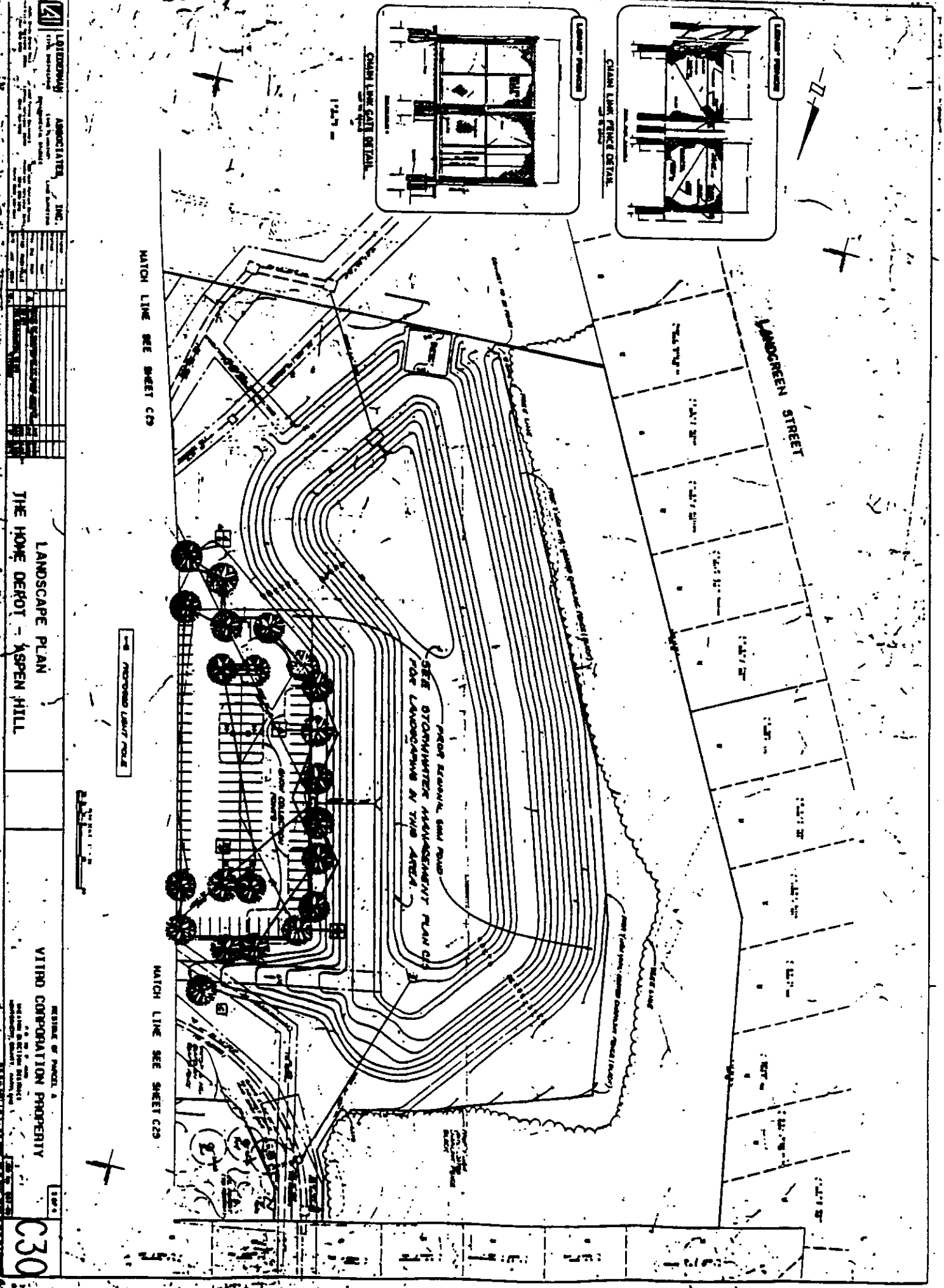
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REVISIONS <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>10/1/88</td> <td>ISSUED FOR PERMIT</td> </tr> </tbody> </table>		NO.	DATE	DESCRIPTION	1	10/1/88	ISSUED FOR PERMIT	SCALE 		PROJECT NO. 88-001 SHEET NO. C3	
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<p>CRIBBING FARRROW</p> <p>10000 CRIBBING FARRROW DRIVE SPRINGFIELD, MD 21151 TEL: 410-326-1234 FAX: 410-326-1235</p>	<p>HOME DEPOT U.S.A., INC.</p> <p>14000 GEORGIA AVENUE ASPEN HILL, MD 20815 TEL: 301-440-1234 FAX: 301-440-1235</p>	<p>ASPEN HILL, MD.</p> <p>SITE PLAN - ELECTRICAL</p> <p>DATE: 10/1/98 BY: J. L. CRIBBING</p>	<p>LEGEND</p> <p>△ TRANSFORMER</p> <p>□ GENERATOR</p> <p>○ LIGHTING POLE</p> <p>— ELECTRICAL CABLE</p>	<p>NOTES</p> <p>1. ALL ELECTRICAL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL ELECTRICAL CODE (NEC) AND THE MARYLAND ELECTRICAL CODE.</p>	<p>APPENDIX</p> <p>1. ELECTRICAL SYMBOLS</p> <p>2. ELECTRICAL SCHEDULE</p>
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- ## PLANT MATERIALS

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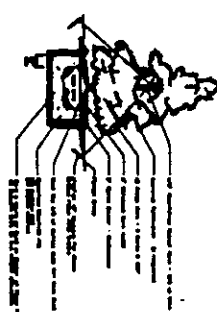
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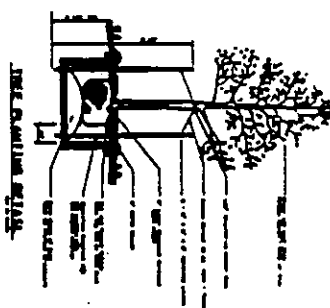
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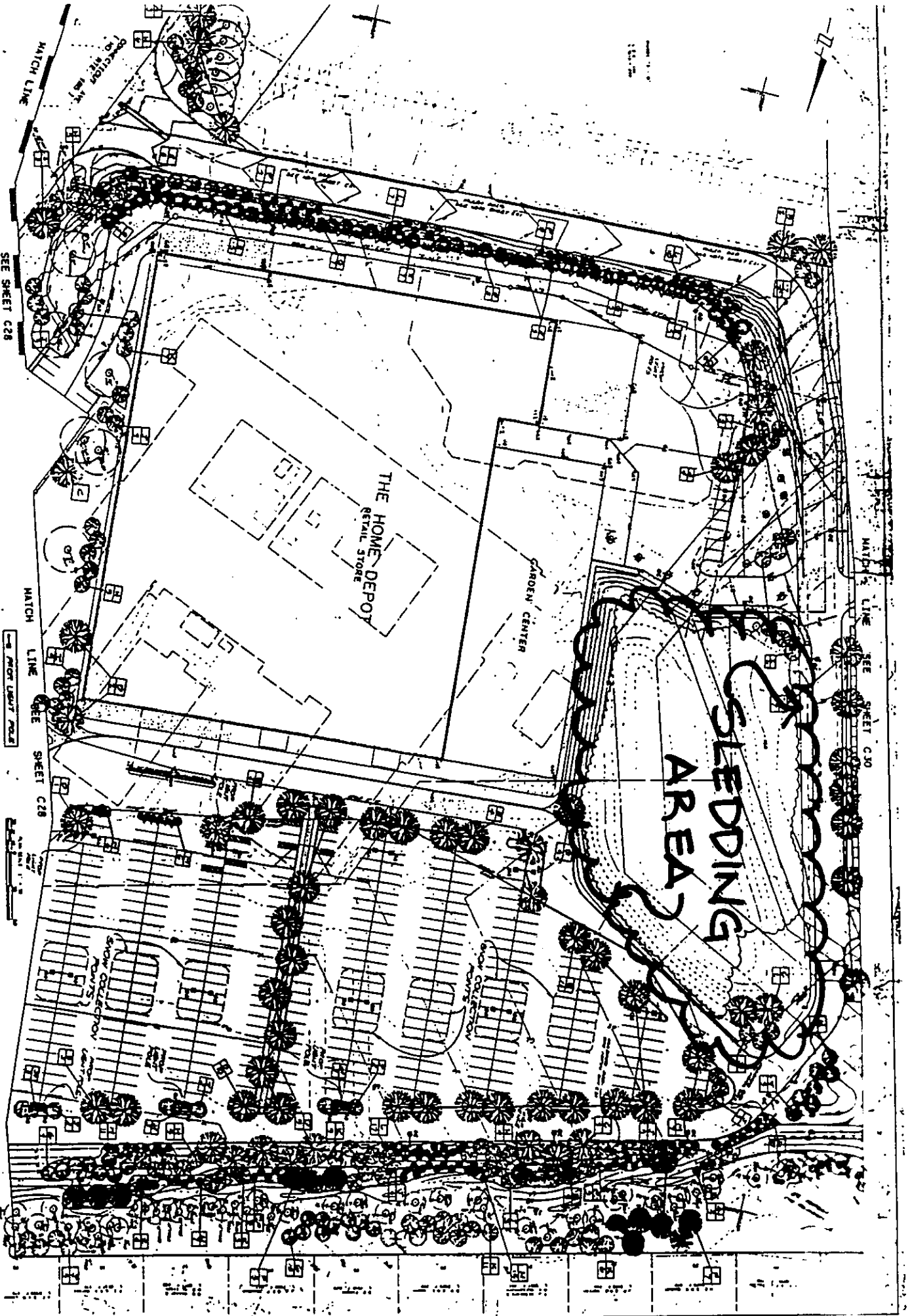
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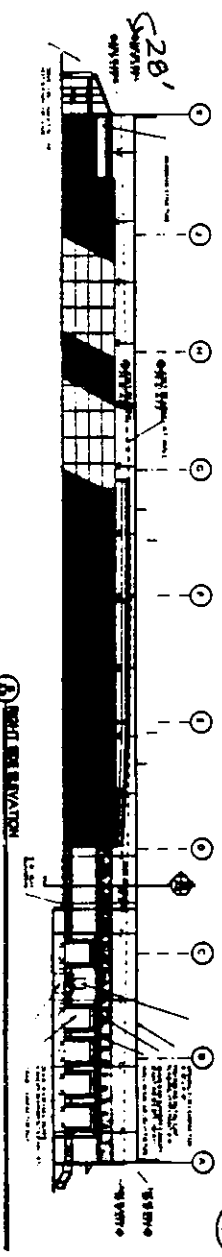
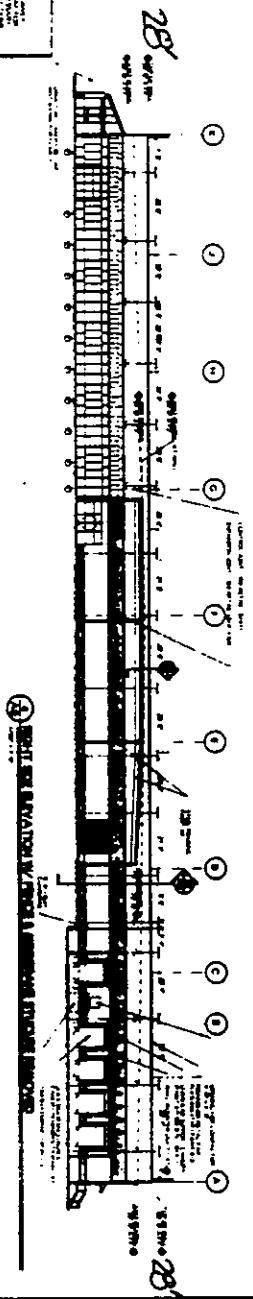
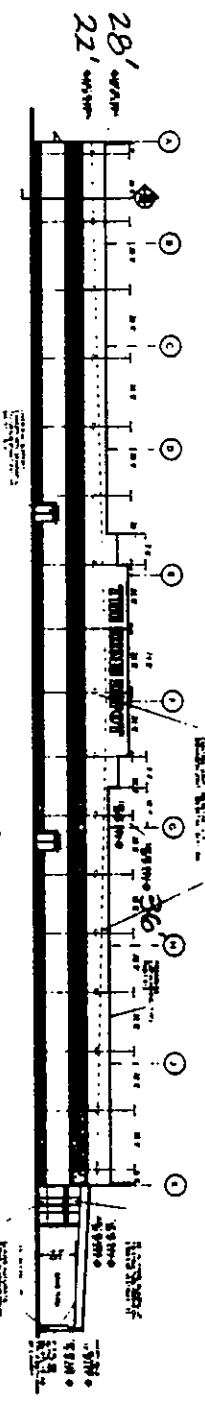
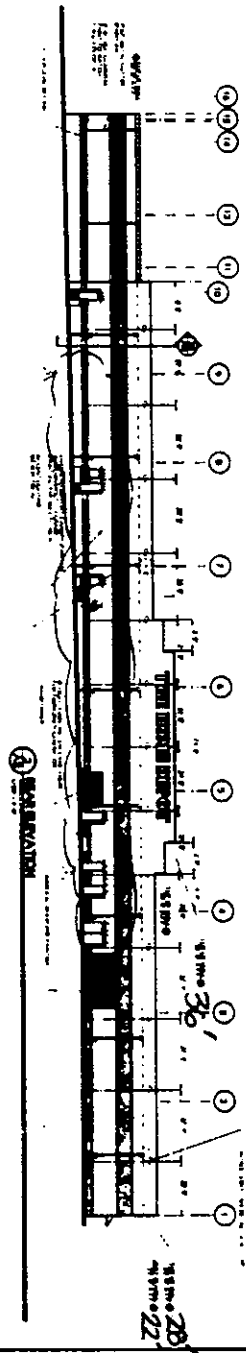
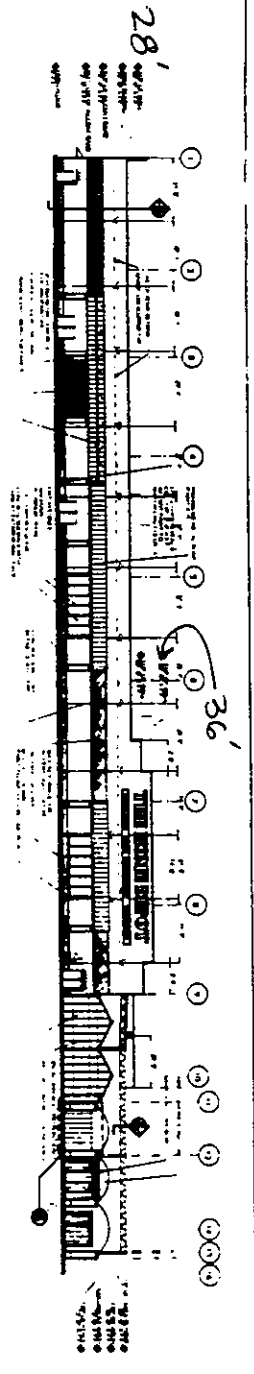
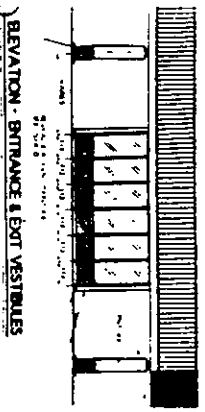
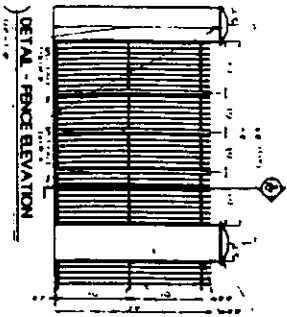




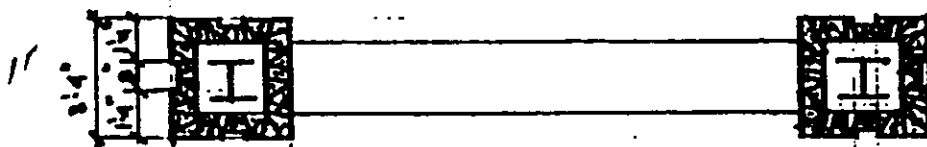
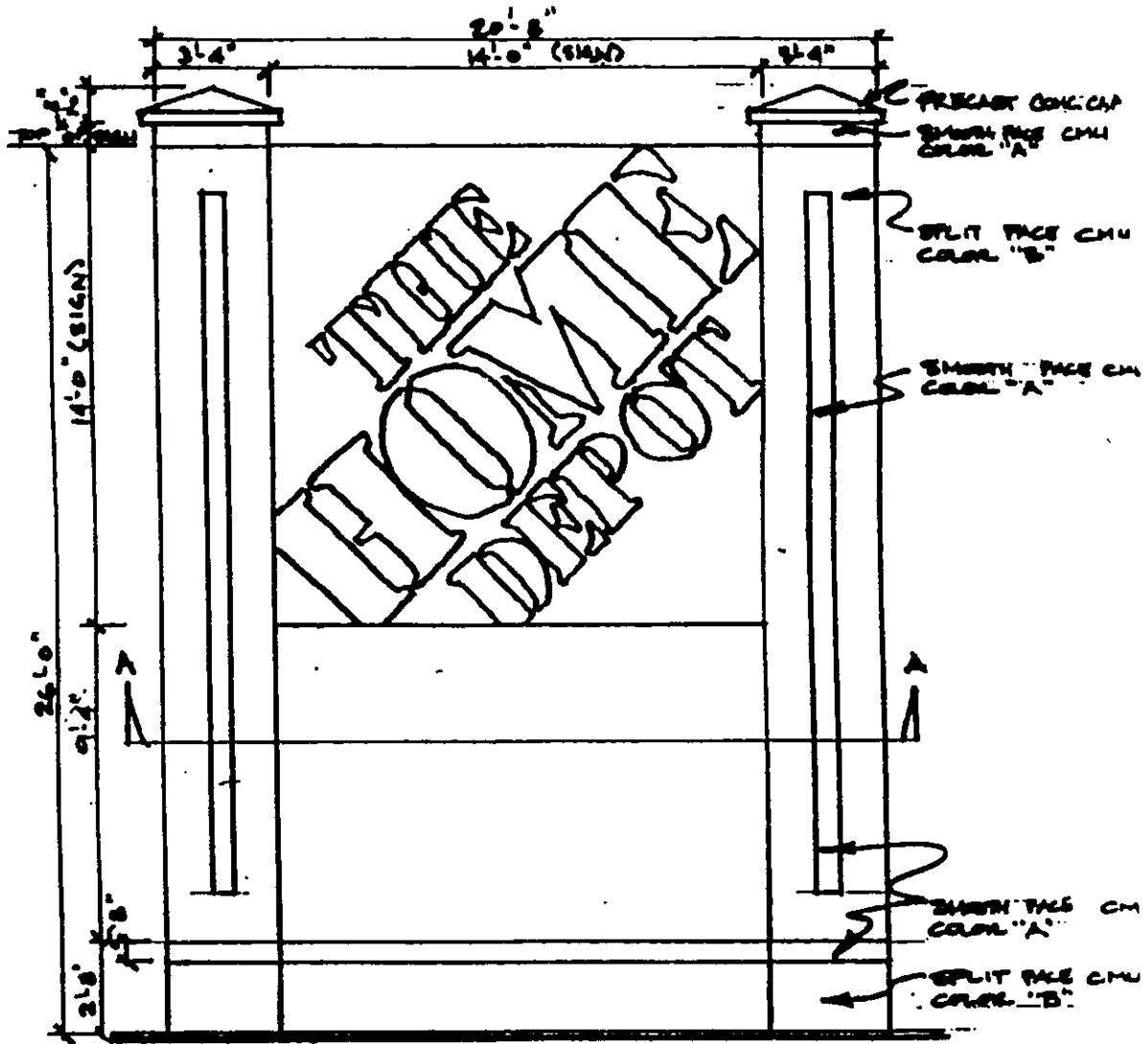
LANDSCAPE PLAN
THE HOME DEPOT - ASPEN HILL

VITRO CORPORATION PROPERTY
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HUNTERDON COUNTY, NEW JERSEY
DATE: 10/1/80
BY: [Signature]

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<p>GREENBERG FARROW</p> <p>ARCHITECTS</p> <p>1000 GEORGIA AVENUE</p> <p>ASPHEN HILL, MD.</p> <p>ASPEN HILL, MD.</p> <p>ELEVATIONS AS NOTED</p> <p>HOME DEPOT NORTH-EAST STANDARDS</p> <p>FIRST TRIMESTER, JAN. 15, 1994</p>	<p>PLEASE CHECK THE FOLLOWING:</p> <p>DATE: 1/15/94</p> <p>BY: [Signature]</p> <p>FOR: [Signature]</p> <p>SCALE: 1/8" = 1'-0"</p> <p>A3</p>	<p>HOME DEPOT USA, INC.</p> <p>1000 GEORGIA AVENUE</p> <p>ASPHEN HILL, MD.</p> <p>ASPEN HILL, MD.</p> <p>ELEVATIONS AS NOTED</p> <p>HOME DEPOT NORTH-EAST STANDARDS</p> <p>FIRST TRIMESTER, JAN. 15, 1994</p>	<p>REVISIONS AFTER PERMIT, OR FULL RELEASE</p> <p>NO. 1</p> <p>DATE: 1/15/94</p> <p>BY: [Signature]</p> <p>FOR: [Signature]</p>	<p>REVISIONS AFTER PERMIT, OR FULL RELEASE</p> <p>NO. 2</p> <p>DATE: 1/15/94</p> <p>BY: [Signature]</p> <p>FOR: [Signature]</p>	<p>AS NOTED BY OTHER OF THE DRAWING.</p> <p>NO. 3</p> <p>DATE: 1/15/94</p> <p>BY: [Signature]</p> <p>FOR: [Signature]</p>
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SECTION "A-A"

PROPOSED PYLON SIGN
HOME DEPOT ASPEN HILL

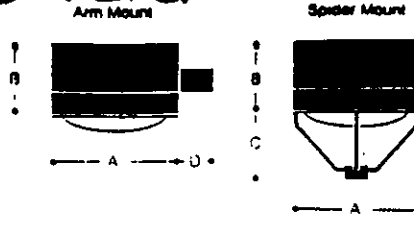
1/4" = 1'-0" C.F.A. 915075 30 NOVEMBER 1995

Gallera luminaires by McGraw-E Edison represent a discriminating and artistic design choice for any large-area lighting application—new installation or retrofit.

Constructed exclusively of top-quality materials, each Gallera unit is factory-tested to ensure trouble-free operation. And because these attractive fixtures are available in two sizes, ten colors and seven optical packages, Gallera sets unprecedented new standards in application flexibility.

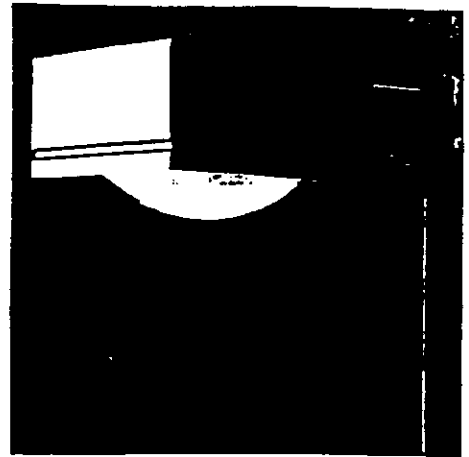
Vertical and horizontal lamp configurations deliver the appropriate beam pattern for virtually any application.

HD- ASPEN HILL



Dimensions—Inches

	A	B	C	D
Large	27"	14 1/2"	12"	6" or 14"
Small	21 1/4"	10 1/4"	12"	6" or 14"



Design Features

Ballast tray hard-mounted to housing interior for easy access and cooler operation.

Formed aluminum housing with stamped reveal interior-welded seams for structural integrity. Finished in polyester powder coat.

Captive retaining screws.

Spin and stamped anodized aluminum reflector (vertical lamp units).

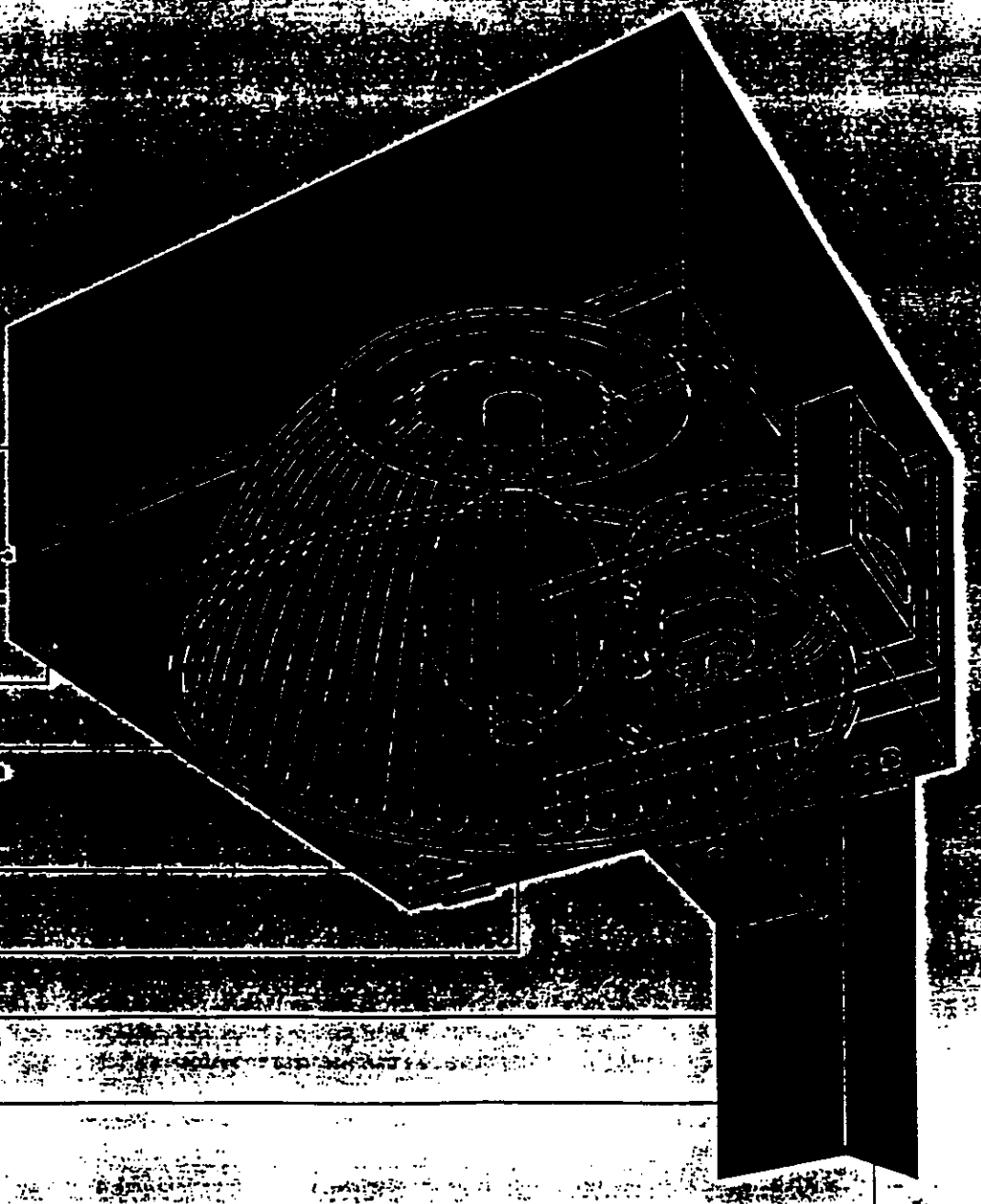
Formed door with heavy-duty hinges, finished in polyester powder coat.

Correx tempered glass lens.

6" or 14" formed steel mounting arms for multiple configurations.

Choice of round or square straight steel or aluminum poles. Finished in polyester powder coat enamel.

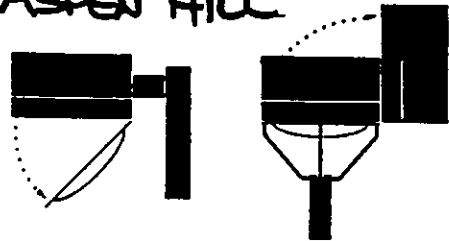
Easy-access fusing.



Maintenance is made simple by removing two captive retaining screws. Door/lens drops on

arm mount units; housing lifts upward and is tethered for safety on spider mount units.

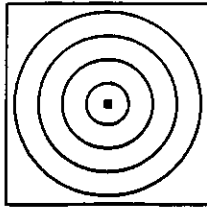
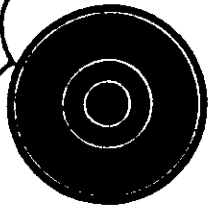
HD-Aspen Hill



Optical Systems Vertical Lamp

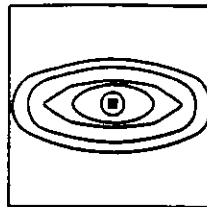
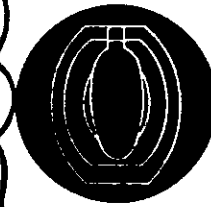
"OA" / "OB"

Horizontal Lamp



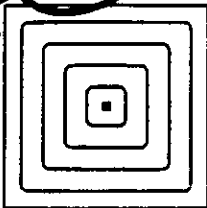
Area Round

Symmetrical round pattern provides for extreme mounting height capability and maximum pole spacing for any large area.



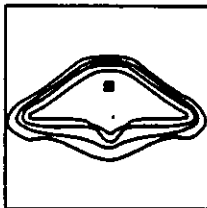
Type I

Excellent for long, narrow area lighting. Type I produces a thin, linear pattern of light, making it ideal for straight roadways or pathways.



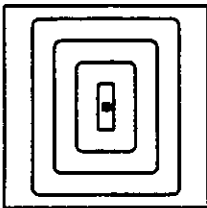
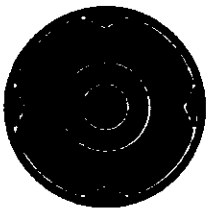
Area Square

Producing a well-defined, square symmetrical light pattern, Area Square provides and ideal geometry for efficient lighting of large parking lots and other spacious areas.



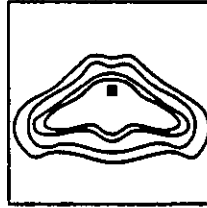
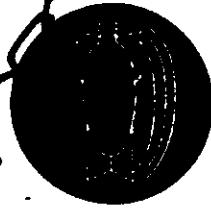
Type II

Ideal for walkways, bicycle paths and narrow roadways, the Type II optical system produces an asymmetrical pattern, allowing maximum pole spacing to light long linear spaces.



Rectangular Wide

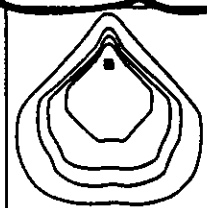
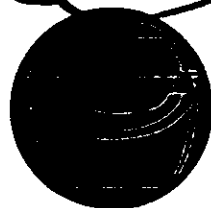
For less-than-symmetrical areas, rectangular distribution provides efficient lighting of large areas without sacrificing pole spacing or max./min. ratios.



Type III

Ideal for roadways, Type III has a wider field of light than Type II. It is also suitable for general parking and area lighting. Cutoff distribution is obtained by field adjustment of the reflector socket.

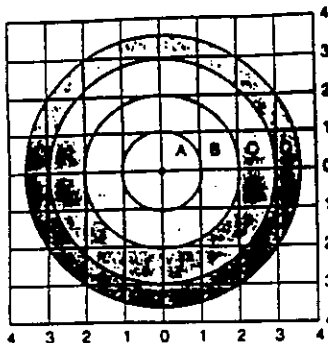
"OC"



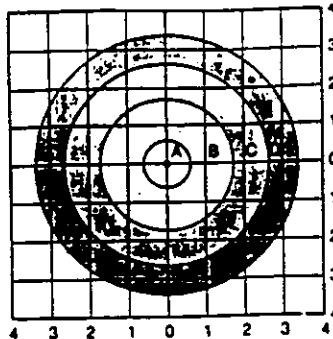
Forward Throw

An excellent perimeter light, Forward Throw produces a forward-throw asymmetrical sharp-cutoff pattern of light for extended area widths. It is ideal for small parking lots and security lighting applications where poles must be mounted at the perimeter of an area or where spill light must be minimized.

Catalog Number QMX401229AR
400-Watt HPS
50,000-Lumen Clear Lamp
Area Round Distribution



Catalog Number QMX401229AR
400-Watt Metal Halide
40,000-Lumen Clear Lamp
Area Round Distribution

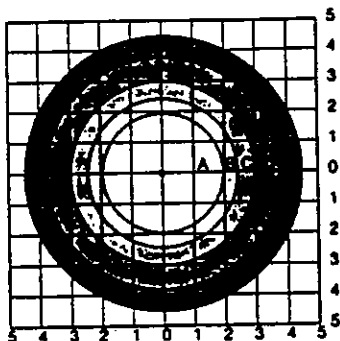


Mounting Height	Footcandle Values for Isofootcandle Lines				
	A	B	C	D	E
20'	4.50	2.25	1.13	0.56	0.23
25'	2.83	1.44	0.72	0.36	0.14
30'	2.00	1.00	0.50	0.25	0.10
35'	1.47	0.73	0.37	0.18	0.07
40'	1.12	0.56	0.28	0.19	0.06

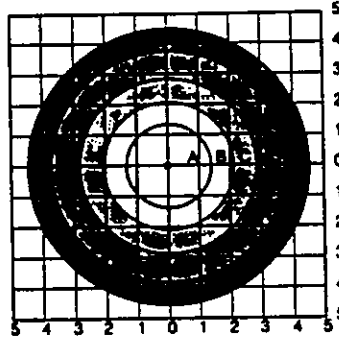
HD- ASPEN HILL

"OA"/"OB"

Catalog Number GLX91229AR
1000-Watt HPS
140,000-Lumen Clear Lamp
Area Round Distribution

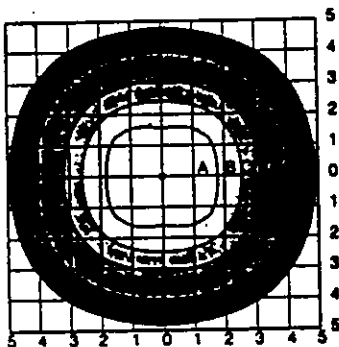


Catalog Number GLX91229AR
1000-Watt Metal Halide
110,000-Lumen Clear Lamp
Area Round Distribution

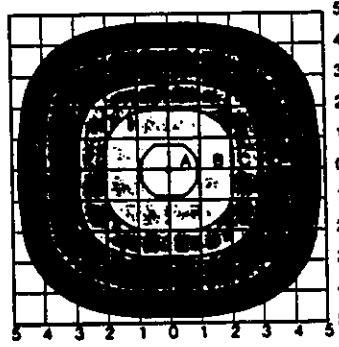


Mounting Height	Footcandle Values for Isofootcandle Lines				
	A	B	C	D	E
30'	3.54	2.66	1.77	0.88	0.44
35'	2.60	1.95	1.30	0.65	0.32
40'	2.00	1.50	1.00	0.50	0.25
45'	1.58	1.18	0.79	0.39	0.19
50'	1.28	0.96	0.64	0.32	0.16

Catalog Number GLX91229AS
1000-Watt HPS
140,000-Lumen Clear Lamp
Area Square Distribution

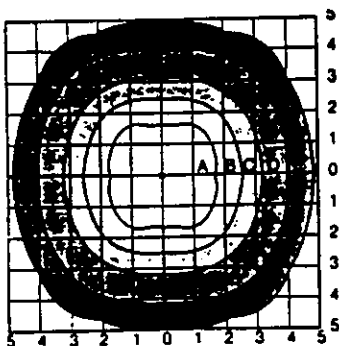


Catalog Number GLX91229AS
1000-Watt Metal Halide
110,000-Lumen Clear Lamp
Area Square Distribution

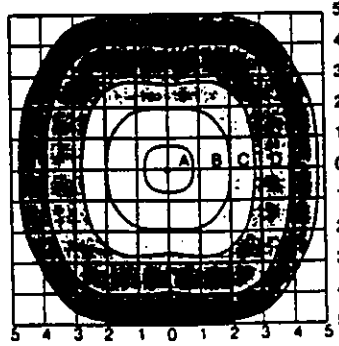


Mounting Height	Footcandle Values for Isofootcandle Lines				
	A	B	C	D	E
30'	3.54	2.66	1.77	0.88	0.44
35'	2.60	1.95	1.30	0.65	0.32
40'	2.00	1.50	1.00	0.50	0.25
45'	1.58	1.18	0.79	0.39	0.19
50'	1.28	0.96	0.64	0.32	0.16

Catalog Number GLX91229RW
1000-Watt HPS
140,000-Lumen Clear Lamp
Rectangular Wide Distribution

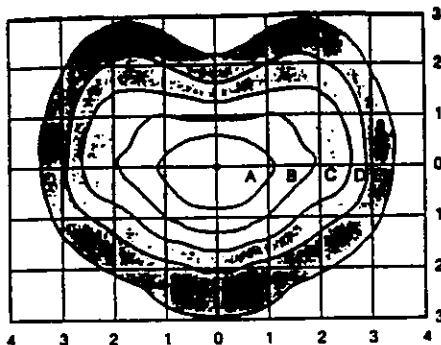


Catalog Number GLX91229RW
1000-Watt Metal Halide
110,000-Lumen Clear Lamp
Rectangular Wide Distribution

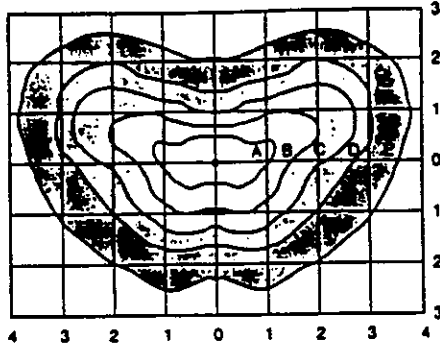


Mounting Height	Footcandle Values for Isofootcandle Lines				
	A	B	C	D	E
30'	3.54	2.66	1.77	0.88	0.44
35'	2.60	1.95	1.30	0.65	0.32
40'	2.00	1.50	1.00	0.50	0.25
45'	1.58	1.18	0.79	0.39	0.19
50'	1.28	0.96	0.64	0.32	0.16

Catalog Number GLX912293D
1000-Watt HPS
140,000-Lumen Clear Lamp
Type III Distribution

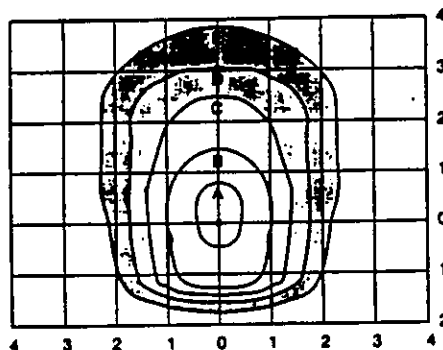


Catalog Number GLX911293D
1000-Watt Metal Halide
107,800-Lumen Clear Lamp
Type III Distribution

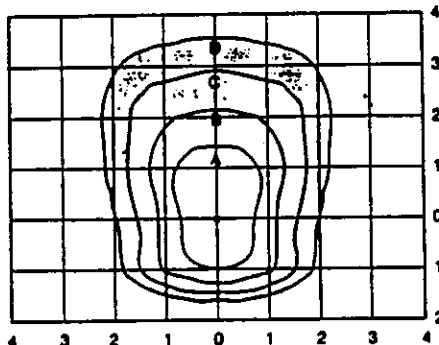


Mounting Height	Footcandle Values for Isofootcandle Lines				
	A	B	C	D	E
30'	8.85	3.54	2.766	0.88	0.44
35'	6.50	2.60	1.95	0.65	0.32
40'	5.00	2.00	1.50	0.50	0.25
45'	3.95	1.58	1.18	0.39	0.19
50'	3.20	1.28	0.96	0.32	0.16

Catalog Number GMX40229FT
400-Watt HPS
50,000-Lumen Clear Lamp
Forward Throw Distribution

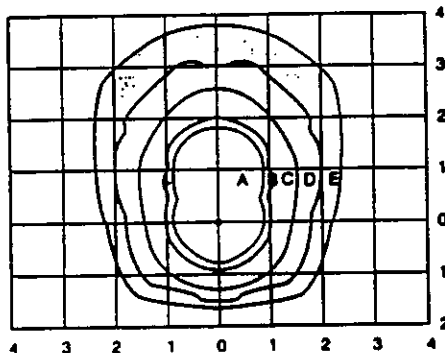


Catalog Number GMX40129FT
400-Watt Metal Halide
40,000-Lumen Clear Lamp
Forward Throw Distribution

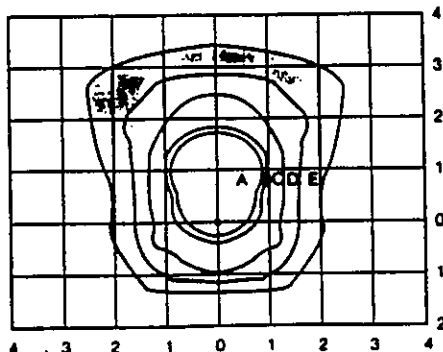


Mounting Height	Footcandle Values for Isofootcandle Lines				
	A	B	C	D	E
20'	11.25	4.50	2.25	1.12	0.56
25'	7.20	2.88	1.44	0.72	0.36
30'	5.00	2.00	1.00	0.50	0.25
35'	3.65	1.48	0.73	0.36	0.18
40'	2.80	1.12	0.56	0.28	0.14

Catalog Number GLX91229FT
1000-Watt HPS
140,000-Lumen Clear Lamp
Forward Throw Distribution

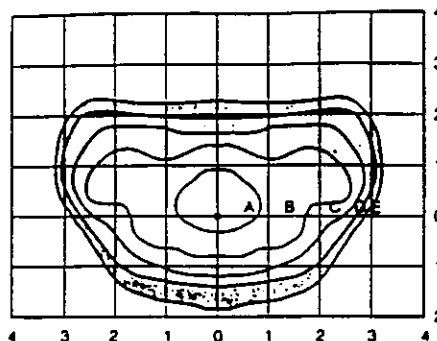


Catalog Number GLX91129FT
1000-Watt Metal Halide
107,800-Lumen Clear Lamp
Forward Throw Distribution

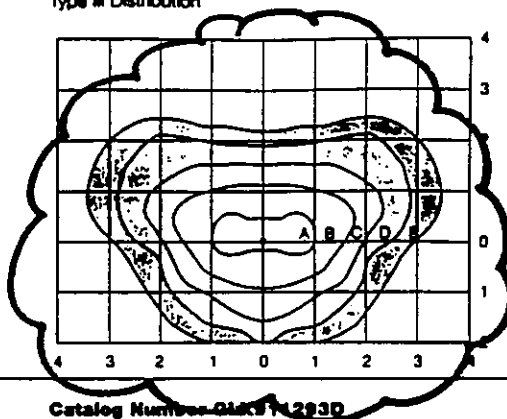


Mounting Height	Footcandle Values for Isofootcandle Lines				
	A	B	C	D	E
30'	8.85	3.54	2.766	0.88	0.44
35'	6.50	2.60	1.95	0.65	0.32
40'	5.00	2.00	1.50	0.50	0.25
45'	3.95	1.58	1.18	0.39	0.19
50'	3.20	1.28	0.96	0.32	0.16

Catalog Number **GMX402293D**
 400-Watt HPS
 50,000-Lumen Clear Lamp
 Type III Distribution



Catalog Number **GMX401293D**
 400-Watt Metal Halide
 40,000-Lumen Clear Lamp
 Type III Distribution

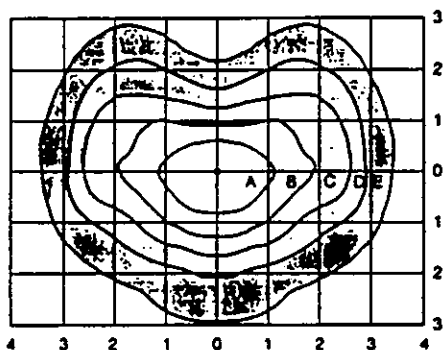


HD - ASPEN HILL

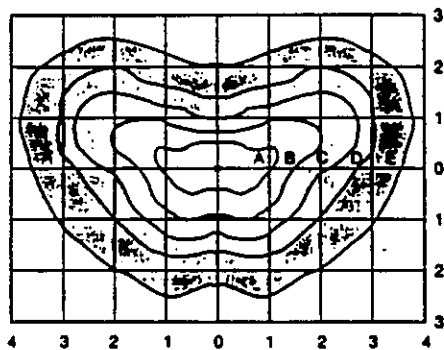
Mounting Height	Footcandle Values for Isofootcandle Lines				
	A	B	C	D	E
20'	11.25	4.50	2.25	1.12	0.56
25'	7.20	2.88	1.44	0.72	0.36
30'	5.00	2.00	1.00	0.50	0.25
35'	3.65	1.46	0.73	0.36	0.18
40'	2.80	1.12	0.56	0.28	0.14

TYPE "OC"
 PROVIDE W/
 HOUSE-SIDE
 SHIELD

Catalog Number **GLX912293D**
 1000-Watt HPS
 140,000-Lumen Clear Lamp
 Type III Distribution

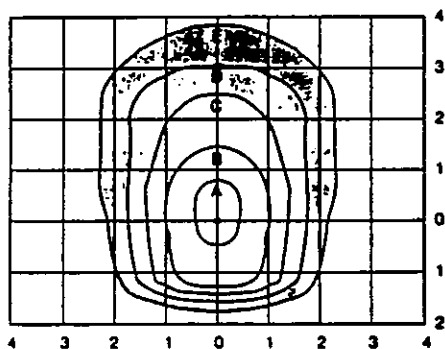


Catalog Number **GLX912293D**
 1000-Watt Metal Halide
 107,800-Lumen Clear Lamp
 Type III Distribution

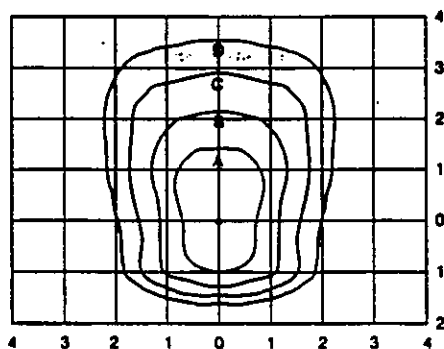


Mounting Height	Footcandle Values for Isofootcandle Lines				
	A	B	C	D	E
30'	8.85	3.54	2.766	0.88	0.44
35'	6.50	2.60	1.95	0.65	0.32
40'	5.00	2.00	1.50	0.50	0.25
45'	3.95	1.58	1.18	0.39	0.19
50'	3.20	1.28	0.96	0.32	0.16

Catalog Number **GMX40229FT**
 400-Watt HPS
 50,000-Lumen Clear Lamp
 Forward Throw Distribution

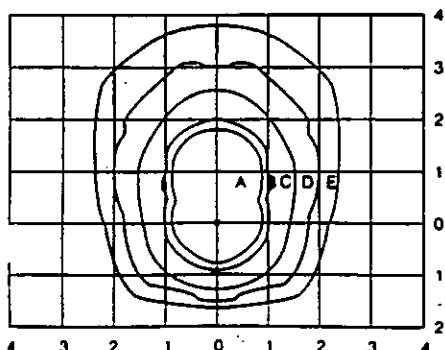


Catalog Number **GMX40129FT**
 400-Watt Metal Halide
 40,000-Lumen Clear Lamp
 Forward Throw Distribution

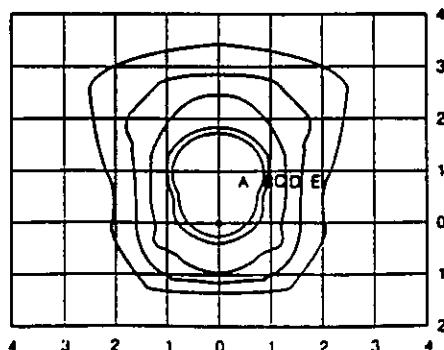


Mounting Height	Footcandle Values for Isofootcandle Lines				
	A	B	C	D	E
20'	11.25	4.50	2.25	1.12	0.56
25'	7.20	2.88	1.44	0.72	0.36
30'	5.00	2.00	1.00	0.50	0.25
35'	3.65	1.46	0.73	0.36	0.18
40'	2.80	1.12	0.56	0.28	0.14

Catalog Number **GLX91229FT**
 1000-Watt HPS
 140,000-Lumen Clear Lamp
 Forward Throw Distribution



Catalog Number **GLX91229FT**
 1000-Watt Metal Halide
 107,800-Lumen Clear Lamp
 Forward Throw Distribution



Mounting Height	Footcandle Values for Isofootcandle Lines				
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30'	8.85	3.54	2.766	0.88	0.44
35'	6.50	2.60	1.95	0.65	0.32
40'	5.00	2.00	1.50	0.50	0.25
45'	3.95	1.58	1.18	0.39	0.19
50'	3.20	1.28	0.96	0.32	0.16

EXHIBIT B

Exhibit B will contain a list of the Neighboring Home Owners who are signatories to the Agreement.

dept\re\hwl\42238\agree8.nei

EXHIBIT B

List of Neighboring Home Owners Signing the Agreement

Nancy L. Zareva
4208 Southend Road

Sharon A. Matsui
4008 Southend Road

Harold Wilson
14001 London Lane

Roger Weaver
Michelle Stillion
4010 Southend Road

Laurence Meinberg
Lorraine Meinberg
4003 Southend Road

Martin Gold
4206 Southend Road

Thomas McIntyre
Nan McIntyre
4104 Southend

Percy Edward Goody
Madonna K. Goody
4203 Southend Road

Joseph Gezelter
Diane K. Gezelter
4103 Southend Road

Jean E. Hockman
4210 Southend Road

Thomas W. Eichner
4012 Southend Road

Wilson W. Eimer
Marguerite B. Eimer
4005 Southend Road

Izet M. Kapetanovic
Terri Rauba Kapetanovic
4204 Southend Road

Charles P. Froom
Marilyn J. Froom
4210 Landgreen Street

Joseph J. Cammisa
Kathryn M. Cammisa
4212 Landgreen St.

Jacques Benjoan
4200 Landgreen St.

Roger J. Neill
Sylvia S. Kihara
4218 Landgreen St.

W. H. Williams
Mary Jane Williams
4214 Landgreen St.

John H. Mohr
Harriette S. Mohr
4208 Landgreen St.

Brian J. Wendrich
4112 Southend Road

Alberto F. Lopez
Amelia B. Lopez
4006 Southend Road

Jean M. Denis
J. Denis
4100 Southend Road

Robert Adams
4102 Southend Road

Barbara B. Dunbar
4108 Southend Road

Parvaneh H. Moussavian-Yousefi
Mehdi Yousefi
4004 Southend Road

Saoda Choudhury
4206 Landgreen St.

Ann Gross
Paul Gross
4114 Landgreen St.

Joseph A. Brown
Marilyn Brown
4112 Landgreen St.

Hallie Melton
4216 Landgreen St.

Julio Silva
4204 Landgreen St

Kyungmi Yi
4202 Landgreen St.

German Aguilar
Ana V. Aguilar
4114 Southend Road.

George J. Marshall
4210 Southend Road

Albert Lockhart
4011 Southend Rd.

Chong Tae Chin
4009 Southend Rd.

Alfonso Espinosa
Miriam Espinosa
4202 Southend Road

Juan Flores
4200 Southend Rd.

Elizabeth C. Freitag
Donald A. Freitag
4107 Southend Rd.


Bernice Cesare
14003 London Lane

Fabian Garcia
4101 Southend Rd.

H. Laessle Taylor
4105 Southend Rd.

Christina L. Taylor
4110 Southend Rd.

This is to certify that this instrument has been prepared under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.


Attorney
Cindy Bar

masters\re\deeds
feesmpl

PLEASE RETURN TO:
LEPCH, EARLY & BREWER
3 Bethesda Metro Center, Suite 380
Bethesda, Maryland 20814-5367

Attn: Cindy Bar
422.38.001

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. CBA-381 [CBA-1270, CBA-2235]

PETITION OF HOME DEPOT

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted January 24, 2007)

(Effective Date of Resolution: April 9, 2007)

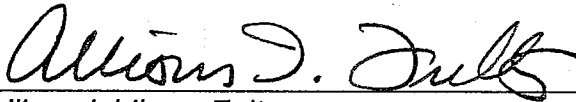
The Board of Appeals has received a letter, dated January 11, 2007, from Ryan Shrimplin, Development Manager with WD Development Group. Mr. Shrimplin writes to inform the Board that The Home Depot is planning an expansion of its store at 14000 Georgia Avenue which is a permitted use and which is adjacent to and served by a parking lot allowed by the above-captioned special exception. Mr. Shrimplin points out that the record for the special exception already takes into account the anticipated 163,000 square footage of the store after it is expanded.

The Board of Appeals granted Case No. CBA-381 to Vitro Corporation of America on January 10, 1955 to permit off-street parking in connection with a commercial use. The Board granted amendments to the special exception, revising setbacks, the height of lights, and the use of a buffer area for an exercise trail in resolutions effective September 26, 1967 and March 5, 1968 and October 31, 1979. The Board granted Case No. CBA-1270 to Vitro Corporation of America, effective July 24, 1962, to again permit parking in connection with a commercial use, for construction of two parking lots, to provide a total of 532 parking spaces. Effective September 5, 1967, the Board granted Case No. CBA-2235 to permit off-street parking in connection with an office building, to construct an additional parking lot to accommodate 507 cars. In Case No. S-2339, effective March 5, 1968, the Board granted a modification of the height of the lights for the parking lot permitted in Case No. S-1270. Effective April 15, 1994, the Board of Appeals granted modifications of all of the special exceptions to transfer them to Home Depot, to reduce the total number of parking spaces to 670, an increase in landscaping, trees, buffering elements, installation of a security fence and replacement of lighting.

The subject property is Parcel "A" located at 14000 Georgia Avenue, Silver Spring, Maryland 20906-2934, in the R-90 Zone.

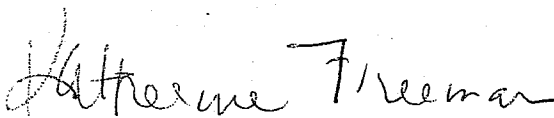
The Board of Appeals considered Mr. Shrimplin's letter at its Worksession on January 24, 2007 and finds, as it pertains to property adjacent to the special exception, that it is in the nature of an informational communication. Therefore, on a motion by Catherine G. Titus, seconded by Wendell M. Holloway, with Donna L. Barron and Caryn L. Hines in agreement and Allison Ishihara Fultz, Chair, necessarily not participating:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case Nos. CBA-381 [CBA-1270, CBA-2235 and CBA-2339] is re-opened to receive Ryan Shrimplin's letter dated January 11, 2005, with attachments.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 9th day of April, 2007.



Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Telephone
Area Code 301
217-6600

Case Nos. CBA-381, CBA-1270, CBA-2235, and CBA-2339
Case Nos. CBA-381-A, CBA-1270-A, and CBA-2235-A

PETITIONS OF VITRO CORPORATION OF AMERICA
(Hearing held February 23, 1994)

OPINION OF THE BOARD
Effective date of Opinion: April 15, 1994

Vitro Corporation has requested modifications of special exception Case Nos. CBA-381, CBA-1270, CBA-2235 and CBA-2339, pursuant to Section 59-G-2.39 of the Zoning Ordinance, to permit: (1) transfer of special exceptions CBA-381, CBA-1270, and CBA-2235 and CBA-2339 from Vitro to PCC Maryland Realty Corporation and Penn Central Corporation; (2) transfer of special exceptions CBA-381, CBA-1270, CBA-2235 from PCC Maryland Realty Corporation and Penn Central Corporation to Home Depot; (3) a reduction in the number of parking spaces from 1,037 to 670. The revised statement of operations reduced the number of remaining parking spaces to 625; (4) an increase in landscaping, trees, buffering elements and the installation of a security fence; and (5) the replacement of the existing lighting.

The subject property is Part of Parcel A, located at 14000 Georgia Avenue, Silver Spring, Maryland, in the R-90 Zone.

Decisions of the Board: Transfers of Case Nos. CBA-381, CBA-1270, CBA-2235 and CBA-2339 from Vitro to PCC Maryland Realty Corporation and Penn Central Corporation GRANTED.
Transfers of Case Nos. CBA-381, CBA-1270, and CBA-2235 from PCC Maryland Realty Corporation and Penn Central Corporation to Home Depot GRANTED.
Other modifications to transferred special exceptions GRANTED.

Harry Lerch, Esquire, represented the petitioners, and called as witnesses John Westbrook, architect and urban planner; Carl Fry, representing Home Depot; Dan Waguesback, architect; Ed Papazian, traffic engineer; and Doug Lohmeyer, registered professional engineer. William Kominers, Esquire, represented Penn Central Corporation and Vitro, and Eliot Chabot, president of the Aspen Hill Civic Association, also appeared.

William Kominers explained the chain of property transfer and asked the Board to transfer Case Nos. CBA-381, CBA-1270, CBA-2235 and CBA-2339 from Vitro to PCC Maryland Realty Corporation and Penn Central Corporation, because the sale of the property from Vitro to them had already taken place. The parties, Home Depot, PCC Maryland Realty Corporation and Penn Central Corporation, then requested the transfer of Case Nos. CBA-381, CBA-1270 and CBA-2235 to Home Depot, contingent on completion of the sale of the property.

Representatives of Home Depot explained that the area covered by the special exception for parking contains approximately 21.3 acres, zoned R-90. The store and much of the parking will be located on twelve acres which are commercially zoned. They confirmed that there will be no charge for parking, no service to persons waiting in cars, except for assistance to customers loading purchases, and no automobile service or repair.

Witnesses explained that single family residences border the property to the north and west. Commercial development is located to the south and east. The proposal includes expanding the already extensive vegetative buffer between existing parking and homes. Berms, landscaping and fences will contribute to the buffer. To the west, a chain link fence covered in black vinyl will be installed within the treed buffer area. A board on board fence, seven feet high, will be used in the northern buffer.

The existing lighting fixtures are 15' high in the northwest portion of the property, and 25' in the northeast portion. They have omni-directional lights. The modification proposes replacing the existing standards with 15' lights in the areas near residential development, and taller fixtures in the areas more removed from the homes. The new fixtures will be equipped with a feature to direct the light toward the pavement.

Currently, 1,037 parking spaces are permitted by special exceptions. The modification, as revised, reduces the number to 625 spaces. In addition, the existing stormwater management facility is "minimal," as described by Home Depot's witnesses. The meadow, which is proposed for the northwest corner of the property, will enhance the control of stormwater runoff. It is possible that in the future a regional stormwater management facility/pond could be installed in the western portion of the property. The existing system is adequate to handle on-site stormwater runoff, partly because the amount of impervious surface will be reduced by 26% (5.6 acres) from the current condition. If the expanded system is installed, it would handle off-site runoff from a much larger area.

According to the expert engineer, most of the Aspen Hill development was constructed prior to the institution of regulations governing the control of stormwater. Home Depot and DEP are investigating the possibility of converting the meadow on the west side of the property into a regional stormwater management pond to capture the runoff from 160 acres north of the site in the Aspen Hill area. Home Depot would attempt to retain as much of the meadow as possible.

Home Depot plans to construct a one-story building on the commercially zoned portion of the property. It will contain approximately 163,000 square feet, significantly reduced from Vitro's buildings which contained 315,000 square feet. The new building will be set back farther than Vitro's from both Georgia Avenue and the residential communities.

Home Depot proposes to post a sign near the intersection of Georgia Avenue and Connecticut Avenue. The sign will be 27' high and will be architecturally integrated with the building.

According to the traffic expert, the site will generate less traffic with Home Depot than with Vitro, even including the traffic from Vitro's continued use of the Lee Building on the adjacent property. The peak times will be Friday, Saturday and Sunday, rather than the morning and evening weekday peak hours which were associated with Vitro. Saturday traffic will be the heaviest. During the week, Home Depot expects that much of the parking lot will be unused.

The plan for the site emphasizes the driveways from Georgia Avenue and Connecticut Avenue, and discourages use of the driveway from Aspen Hill Road. Currently, three driveways connect the property and the Lee Building property. One driveway will remain after the conversion to Home Depot's use. The petitioner is discussing with the State Highway Administration (SHA) the installation of a light at the Georgia Avenue driveway.

The traffic expert found that the roadway network will accommodate the traffic, and that vehicles would have a safe sight distance at the driveways. He further found that there would be no nuisance created by the parking.

Eliot Chabot, president of the Aspen Hill Civic Association, testified that the civic association endorses Home Depot's proposal. He had submitted a letter dated February 22, 1994, in which he stated, "Since it first publicly announced its interest in the Vitro site last November, Home Depot has shown an outstanding willingness to work with the community to meet our concerns about the impact of their use on the immediate neighborhood and the surrounding community." His letter included some of the items which form the agreement between Home Depot and the community. Mr. Chabot emphasized that the buffer areas on the north and west borders of the property would be memorialized by covenants, in perpetuity.

FINDINGS OF THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Technical Staff at the Maryland-National Capital Park and Planning Commission (M-NCPPC) recommended approval with conditions (Exhibit No. 21).

No one appeared at the hearing in opposition to the proposed modifications, and the record contains no statements in opposition.

FINDINGS OF THE BOARD

The Board is impressed with the level of effort exerted by both Home Depot and the community to reach consensus about measures to alleviate perceived impacts from the new use of the property. The Board understands that Vitro's use as an office was considerably different than Home Depot's is likely to be as a retail business. In some ways the impact will be less intense, while in some ways there is the potential for increased impact. For example, Vitro's use was confined primarily to weekday working hours, while Home Depot's busiest times will be Friday, Saturday and Sunday. Nonetheless, the Board is persuaded by the evidence, testimony, and exhibits that Home Depot has proposed measures to mitigate adverse impact. The Board fully expects that the special exceptions for parking, which are the subject of this Opinion, will result in no adverse impact.

Home Depot has committed to the installation of increased landscaping, buffers such as fences and berms, and replacement lighting with non-glare, directional fixtures. Furthermore, the number of parking spaces will be reduced almost by half, from 1,037 to 625. The reduction will result in less impact on the communities to the north and west, and to an improved stormwater management system.

Based on the testimony and evidence in the record which is binding on the petitioner, the Board finds that the proposed modification satisfies the general conditions for special exception as defined by Section 59-G-1.21 of the Montgomery County Code, as well as the specific requirements for off-street parking in connection with a commercial use as set forth in Section 59-G-2.39.

Therefore, this modification to the special exception to permit: (1) transfer of special exceptions CBA-381, CBA-1270, and CBA-2235 and CBA-2339 from Vitro to PCC Maryland Realty Corporation and Penn Central Corporation; (2) transfer of special exceptions CBA-381, CBA-1270, CBA-2235 from PCC Maryland Realty Corporation and Penn Central Corporation to Home Depot; (3) a reduction in the number of parking spaces from 1,037 to 625; (4) an increase in landscaping, trees, buffering elements and the installation of a security fence; and (5) the replacement of the existing lighting is hereby granted to the petitioner only, subject to the following conditions:

1. Petitioner is bound by the testimony, both oral and written, and all evidence and exhibits in the record.
2. The transfer of the special exceptions from Vitro to PCC Maryland Realty Corporation and Penn Central Corporation (CBA-381, CBA-1270, CBA-2235 and CBA-2339) is effective with this opinion.
3. The transfer of the special exceptions from PCC Maryland Realty Corporation and Penn Central Corporation to Home Depot (CBA-381, CBA-1270 and CBA-2235) will be effective when the sale of the property is completed. Home Depot must notify the Board of Appeals when this occurs.

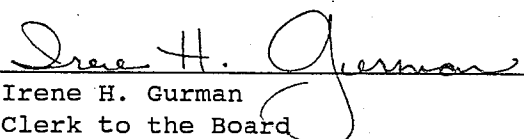
4. Petitioner must obtain approval of a final landscape, lighting and signage plan from the Technical Staff of the Maryland-National Capital Park and Planning Commission. All plant material must be maintained and replaced as necessary. One copy of the approved plan must be submitted to the Board for its records. One copy of the approved plan must be submitted to the Zoning Supervisor of the Department of Environmental Protection (DEP). Petitioner must obtain a sign permit from DEP.
5. Petitioner must obtain approval of a stormwater management plan from DEP. If a regional stormwater management plan is proposed and approved, petitioner must submit a revised site plan to the Board for its records.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition.

The foregoing Resolution was proposed by William S. Green, and concurred in by Helen R. Strang, Allison Bryant, Judith B. Heimann, Chairman, and K. Lindsay Raufaste.

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 15th day of April, 1994.


Irene H. Gurman
Clerk to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four-months' period within which the right granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.