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THE HOME DEPOT U.S.A., INC.
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
11

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

13 Petitioner and Plaintiff,

14 v.

15 THE CITY OF LOS ANGELES, a municipal
corporation; THE CITY COUNCIL OF THE
16 CITY OF LOS ANGELES, its governing
body; and DOES 1 through 100, inclusive,
17

18 Respondents and Defendants.

CASE NO.

**VERIFIED PETITION FOR WRIT OF
MANDATE; COMPLAINT FOR DAMAGES
AND DECLARATORY RELIEF**

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1 By this Verified Petition for Writ of Mandate and Complaint for Damages and
2 Declaratory Relief, and in support thereof, Petitioner and Plaintiff The Home Depot U.S.A., Inc.
3 (“Home Depot”), alleges as follows:

4 **INTRODUCTION**

5 1. For nearly two years, City officials have illegally interfered with Home
6 Depot’s right to remodel its vacant, former K-mart store in Sunland. After the City’s
7 Department of Building and Safety properly issued a routine building permit to remodel the store
8 to Home Depot in July 2006, political officials interceded illegally to undo that permit. The
9 City’s political officials ignored the City’s own well established rules and procedures by
10 interfering with a minor, ministerial building permit solely for political reasons. That illegal
11 interference creates a dangerous new precedent that will have a chilling effect on local business
12 investments and jobs. This action will have devastating consequences for Los Angeles,
13 discouraging future business investment, revitalization efforts and job creation by undermining
14 all certainty in the City’s building permit process.

15 2. The City of Los Angeles issues over 140,000 building permits per year, the
16 vast majority of which are ministerial and, therefore, must be issued as long as the applicant
17 meets the City’s Municipal Code requirements. Home Depot applied for a ministerial permit to
18 remodel its existing, vacant “big box” store in the Sunland area of the City so that it could be
19 reused—just as tens of thousands of businesses do every year. The Department of Building and
20 Safety properly issued Home Depot its remodeling permit in July 2006. But then, rather than
21 applying its own rules to Home Depot as it does to others, the City changed its processes to deny
22 Home Depot its legally vested rights. First, a Zoning Administrator improperly revoked the
23 permit. Second, though the five-person North Valley Area Planning Commission reinstated the
24 permit, the City Council took the extraordinary and unprecedented step of overturning a building
25 permit over a year after it was issued and after approximately 90 percent of the previously
26 approved remodel work had been completed.

27 3. Home Depot followed the City’s well established rules and procedures,
28 rightfully expecting that the City would also abide by them. Unfortunately, at the behest of

1 political officials, the City singled out Home Depot for special, unfair treatment, depriving Home
2 Depot of the same rights that all others in the City enjoy. This action was illegal, bad public
3 policy, and set a dangerous precedent for the business community in Los Angeles. The City's
4 rules cannot and should not be ignored just to achieve the result a political official prefers.

5 4. The consequences of the City's actions will result in millions of dollars of
6 tax revenue and good jobs being lost to neighboring cities with more hospitable business climate,
7 and unsightly vacant and deteriorating buildings will continue to plague the City because
8 businesses will be too afraid to invest.

9 BACKGROUND

10 5. Home Depot brings this action to compel the City of Los Angeles to
11 reinstate the remodeling building permit that Home Depot justifiably relied on and expended at
12 least \$2 million under. Home Depot seeks: (1) a writ of mandate under California Code of Civil
13 Procedure Sections 1085 and/or 1094.5, *et seq.*, directed to the City of Los Angeles and the Los
14 Angeles City Council; (2) a declaration under California Code of Civil Procedure Section 1060;
15 (3) a declaration under 42 U.S.C. Section 1983; and (4) attorneys' fees and costs pursuant to 42
16 U.S.C. Section 1988(b).

17 6. This is a challenge to Respondents and Defendants City of Los Angeles'
18 and the Los Angeles City Council's ("City Council") (collectively, the "City") revocation of a
19 ministerial remodeling permit for a vacant K-mart store located at 8040 Foothill Boulevard in the
20 City of Los Angeles (Building Permit No. 06016-10000-03354) (the "Permit").

21 7. The City violated the law repeatedly in connection with the Permit,
22 including:

- 23 • Los Angeles Municipal Code ("Municipal Code") Section 91.106.4.1, which requires a
24 building permit to be issued upon the Department of Building and Safety's determination that
25 an application conforms with the Municipal Code and other relevant ordinances;
- 26 • Municipal Code Section 12.26.K, which requires that appeals from the Department of
27 Building and Safety be made within 15 days, that any timely appeal be resolved within 75
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1 days, and that the Department of Building and Safety's determinations be reviewed only for
2 error or abuse of discretion; and

- 3 • Home Depot's due process and equal protection rights afforded by the California and United
4 States Constitutions.

5 8. Home Depot seeks a writ of mandate and declaratory and equitable relief
6 directing the City to reinstate the Permit and for an award of damages suffered as a result of the
7 City's illegal and unconstitutional actions.

8 THE PARTIES

9 9. Petitioner and Plaintiff The Home Depot U.S.A., Inc., is a Delaware
10 corporation qualified to conduct and conducting business in the State of California and in the
11 County of Los Angeles.

12 10. Respondent and Defendant the City of Los Angeles is a municipal
13 corporation organized under the laws of the State of California and located in the County of Los
14 Angeles.

15 11. Home Depot is informed and believes and thereon alleges that Respondent
16 and Defendant the City Council of the City of Los Angeles is the City's elected governing body,
17 created and organized under Section 240 of the City of Los Angeles' Charter ("Charter"), and it
18 acted as the final decision-making body with regard to the Permit.

19 12. Home Depot does not know the names or capacities of the respondents and
20 defendants named herein as Does 1 through 100 and will amend this Petition and Complaint
21 when their names and capacities have been ascertained.

22 13. Home Depot has no plain, speedy, or adequate remedy at law. Unless this
23 Court grants the relief requested, the City's revocation of the Permit will result in irreparable
24 harm to Home Depot. No monetary or other legal remedy can adequately compensate Home
25 Depot for this harm.

26 14. Home Depot exhausted all possible administrative remedies. Home Depot
27 timely appealed the City's administrative bodies' actions. Home Depot also submitted written
28 evidence to the City Council, Planning Department, and Department of Building and Safety, and

1 provided oral testimony at various public hearings, including the August 15, 2007 City Council
2 hearing, raising the objections that form the basis of this Petition and Complaint.

3 **JURISDICTION AND VENUE**

4 15. This Court has jurisdiction to issue writs of mandate pursuant to California
5 Code of Civil Procedure Sections 1085 and/or 1094.5, *et seq.*, to render judicial determinations,
6 to issue declarations under California Code of Civil Procedure Section 1060 and 42 U.S.C.
7 Section 1983, and is otherwise authorized to grant the relief prayed for herein.

8 16. Venue is proper in this Court pursuant to California Code of Civil
9 Procedure Section 393(b) because the property relevant to the Permit is located in the County of
10 Los Angeles, the City is located in the County of Los Angeles, and the City's violations of the
11 law occurred in the County of Los Angeles.

12 **GENERAL ALLEGATIONS**

13 **A. The Site Has Had a "Big-Box" Store for 30 Years**

14 17. Home Depot acquired a leasehold interest in real property located at 8040
15 Foothill Boulevard, Los Angeles, California 91040 (the "Site") in November 2004.

16 18. The Site is approximately 480,174.1 square feet or 11.02 acres and has
17 been developed with a "big-box" retail store for the past 30 years.

18 19. In 1977, the Los Angeles Department of Building and Safety issued
19 Building Permit No. 77LA32691 ("K-mart Permit") to construct a one-story "big-box" retail
20 store with a mezzanine ("K-mart Building"). The total approximate building area of the K-mart
21 Building was 113,000 square feet. Parking for 706 cars was also provided under the K-mart
22 Permit. K-mart occupied the building from 1977 until late 2004, when it closed its store and
23 transferred its leasehold interest in the Site to Home Depot.

24 **B. The Foothill Boulevard Corridor Specific Plan Does Not Apply to Remodels**

25 20. The Site is located in the Foothill Boulevard Corridor Specific Plan (the
26 "Specific Plan") area. Adopted in 1995, the Specific Plan provides that only a "Project" (as
27 specially defined in the Specific Plan) in a "Major Activity Area" or a "Target Area" requires
28 review under the Specific Plan.

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21. The Specific Plan defines a "Project" as:

The construction, erection, structural alteration of, or addition to, any building or structure, including architectural projections attached to the exterior walls or roof structures, which requires the issuance of a building permit or a change of use permit on a lot located in whole or in part within the Specific Plan area. *A Project does not include interior remodeling of a building which does not increase the floor area*, or single-family dwellings.

(Specific Plan, § 4 (emphasis added).)

22. Municipal Code Section 12.03 defines "structural alterations" as: "Any change which would prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders."

23. Accordingly, if work is not a "Project," then the City's Director of Planning is not authorized to conduct Specific Plan review.

C. Home Depot Told the Councilmember It Wanted To Build a New Store at the Site, But the Councilmember Said She Would Block It

24. When Home Depot acquired an interest in the Site, it proposed demolishing the vacant K-mart Building and building a new Home Depot store in a modern, new building to serve the community's needs best.

25. Despite the long-existing use of the Site for a big-box store and the community benefits Home Depot would bring, Councilmember Wendy Greuel, the City Councilmember representing the District that includes the Site, joined with a small but vocal group of local residents and a competing large hardware store chain (the Do-it Center) to interfere with that effort and to pressure the City decision-makers to refuse to allow any new Home Depot store.

26. Councilmember Greuel responded to Home Depot's proposal to build a new store in a February 15, 2005 letter, stating:

I want you to understand that ... you have made a very serious mistake. I have instructed my staff to use the full resources of my office and appropriate city departments to oppose your Project Permit Compliance on all legally cognizable grounds. That means that any project permit that may be issued will be appealed, and if necessary, I will bring the matter before the entire City Council.

A true and correct copy of that letter is attached hereto as Exhibit A.

1 **D. Because the Councilmember Said She Would Block a New Store, Home Depot**
2 **Decided To Remodel the Existing K-mart Building**

3 27. If Home Depot demolished the K-mart Building and constructed a new
4 Home Depot store, the new construction would have been required to undergo review under the
5 Specific Plan. Given the Councilmember's definitive statements that she would block a new
6 Home Depot store, and given the Do-it Center-funded opposition, Home Depot concluded that it
7 would not receive a fair, balanced, and timely review under the Specific Plan.

8 28. As a result, Home Depot had no reasonable choice other than to drop its
9 plans for a new store and accept, instead, a remodeling of the existing K-mart Building. The
10 remodel would be a "by-right" activity and would not be subject to review under the Specific
11 Plan.

12 29. Home Depot expected that its ministerial, "by-right" remodeling permit
13 would be processed in the same manner as the more than 140,000 ministerial, "by-right" building
14 permits the City issues every year. Many of these ministerial building permits allow new tenants
15 and owners to bring existing, out-of-date buildings up to today's standards and codes. Examples
16 of such modernization include replacing environmentally harmful air conditioning units,
17 bringing buildings into compliance with the Americans with Disabilities Act, and bringing
18 buildings up to current building code standards.

19 30. Even though Home Depot decided to conduct a "by-right" remodel of the
20 existing K-mart Building, the Councilmember's office interceded and worked to turn the
21 ministerial permit into a discretionary process. Home Depot is informed and believes and
22 alleges thereon that the Councilmember's office improperly pressured the Planning Department
23 and Department of Building and Safety to ignore some Municipal Code requirements and
24 reinterpret others. The Councilmember's office repeatedly questioned the City's Planning
25 Department on whether Home Depot's proposed remodel of the K-mart store would be "by-
26 right" or a "Project" under the Specific Plan and, if it were a "Project," whether it would be
27 subject to discretionary review, and the Planning Department consistently told her that it was
28 "by-right." (Specific Plan, §§ 4, 10.)

1 31. By letter dated August 25, 2005, then-Deputy Director of the City's
2 Planning Department, Mr. Robert Sutton, responded to the Councilmember. Mr. Sutton
3 concluded that Home Depot's remodel and reuse of the K-mart Building was a "by-right" use of
4 the Site and *not* a "Project" as defined in the Specific Plan.

5 **E. Another Competitor Joined In the Councilmember's Coordinated Interference; A**
6 **Small Sunland-Tujunga Community Group Also Joined In**

7 32. Over 50 businesses in the Sunland-Tujunga community are on record as
8 supporting a new Home Depot store to replace the previous K-mart store, citing, among other
9 reasons, the economic revitalization that will occur when the Home Depot store opens. Despite
10 broad-based support from the local business community, Home Depot's direct competitor
11 launched a coordinated opposition effort to avoid having to compete with Home Depot fairly.

12 33. A competing hardware store—Do-it Center—and a small but vocal
13 minority of the Sunland community joined the Councilmember to block a Home Depot store at
14 the Site.

15 34. Home Depot is informed and believes and alleges thereon that the large
16 Do-it Center hardware store chain funded a front group called the "No Home Depot Campaign."
17 Home Depot is informed and believes and alleges thereon that the No Home Depot Campaign
18 used Do-it Center's funds to fight Home Depot to protect Do-it Center from fair competition.

19 35. The Do-it Center has publicly opposed a new Home Depot store, and a
20 lawyer representing the No Home Depot Campaign admitted at a public hearing that the Do-it
21 Center was paying his fees, at least in part.

22 36. Seeking to avoid fair competition in its geographic area, the Do-it Center is
23 challenging or has challenged Home Depot and other hardware stores in other Southern
24 California cities, including Thousand Oaks and Westlake Village.

25 37. Home Depot is informed and believes and thereon alleges that the Do-it
26 Center hired a public relations firm, lawyers, other consultants and lobbyists to help block
27 competition across Southern California. One public relations firm, Abrams Creative, even brags
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1 on its Web site that it “advised and successfully assisted [Do-it Center] to prevent encroachment
2 by competing big box stores in their geographic areas.” (Exhibit B.)

3 38. Buoyed by Do-it Center’s public opposition to the proposed Home Depot
4 store, a small but vocal minority of Sunland-Tujunga residents, calling themselves the “No
5 Home Depot Campaign,” formed to try to block the Home Depot store.

6 **F. Home Depot’s Proposed Remodel Would Result in a Smaller Store and Consisted of**
7 **Work Required by Federal, State, and/or City Law and “Interior Remodeling”; the**
8 **Building and Safety and Planning Departments Correctly Concluded It Was Not a**
9 **“Project”**

10 39. The remodeled Home Depot store would have less floor area than the
11 previous K-mart store. The K-mart Building’s footprint would not change, but an existing
12 10,000-square-foot mezzanine would be removed.

13 40. California, federal, and/or City law requires most elements approved under
14 the Permit. For example, Title 24 of the California Code of Regulations (“Title 24”) requires
15 that the K-mart Building’s 30-year-old, freon-based air conditioning system be replaced with
16 new, environmentally friendly, water-cooled evaporative coolers. Further, Title 24 and the
17 Americans with Disabilities Act (42 U.S.C. § 126, *et seq.*) require Home Depot to replace or
18 widen certain exterior doors, install a wheelchair ramp and repair the sidewalk. The California
19 Building Code and the Los Angeles Municipal Code require fire-suppression sprinkler systems
20 and smoke and heat vents to be installed.

21 41. The Department of Building and Safety and the Planning Department
22 determined that the installation of a new air conditioning system, removal and replacement of
23 exterior doors, installation of a wheelchair ramp, sidewalk repair, and installation of a
24 fire-suppression sprinkler system and smoke and heat vents were tenant improvements that did
25 not constitute a “Project” and, therefore, did not require further review under the Specific Plan.

26 42. Home Depot’s tenant-improvement plans also included installing a new
27 floor because the existing floor was cracked, aging, and insufficient for the new racking system
28 needed for the Home Depot store.

1 43. The Department of Building and Safety and the Planning Department
2 concluded that installing a new floor did not trigger review under the Specific Plan because it
3 was not a “structural alteration,” as the Municipal Code defines it. The Department of Building
4 and Safety and the Planning Department determined that the new floor was independent of the
5 K-mart Building’s structural supporting members and did not “prolong the life of [its] supporting
6 members.” (Municipal Code § 12.03.)

7 **G. The City Unreasonably Delayed Issuing the Permit for Eight Months and Allowed**
8 **the Store’s Opponents To Become a *De Facto* Branch of the City**

9 44. Through the Councilmember’s office, the No Home Depot Campaign,
10 funded by the Do-It Center, was granted extensive access to the City’s departments charged with
11 handling Home Depot’s request to remodel the K-mart Building (the Planning Department and
12 the Department of Building and Safety). The Councilmember’s office’s and opponents’ efforts
13 dragged out by eight months what should have been the simple issuance of a “by-right” building
14 permit.

15 45. Home Depot applied for the Permit to remodel the vacant K-mart Building
16 in November 2005. The Department of Building and Safety issued the Permit eight months later,
17 on July 24, 2006.

18 46. During the eight-month period between submission of the Permit
19 application and Permit issuance, Home Depot met with the staff of the relevant City departments,
20 the Councilmember’s staff, and the store’s opponents on more than twenty separate occasions to
21 discuss the remodel’s elements. Home Depot submitted four plan revisions to the City for its
22 review and comment. (Exhibit C [Chronology].)

23 47. Showing close cooperation between the Councilmember’s office and the
24 store’s opponents, the Councilmember’s office provided copies of Home Depot’s remodeling
25 plans directly to the No Home Depot Campaign. (*See* Exhibit D [Email from the
26 Councilmember’s Planning Deputy].)

27 48. The Councilmember’s office efforts to interfere with the City’s issuance of
28 what should have been a routine, “by-right” building permit contributed significantly to the

1 City's delay in issuing the Permit. At the Councilmember's office insistence, the City
2 departments gave extraordinary attention and credence—far beyond the City's normal practice—
3 to Home Depot's opponents and gave them the special power to comment and review the City's
4 departments' actions before the City's departments forwarded items to Home Depot. In practical
5 effect, the No Home Depot Campaign and the Do-it Center became a *de facto* branch of the City
6 government while the City processed the Permit application.

7 49. Home Depot is informed and believes and thereon alleges that, at every
8 step of this process, the Councilmember's office interfered with the City's departments as they
9 tried to carry out their legally required ministerial duties, making repeated efforts to dictate the
10 City's Planning Department's and Department of Building and Safety's ministerial actions.

11 50. For example, in a March 7, 2006 letter addressed to the heads of the
12 Planning Department and the Department of Building and Safety, the Councilmember stated: "It
13 is my hope that your staff's review of the matter will result in a conclusion that the remodel
14 proposal is a Project and that appropriate environmental review is required." (Exhibit E
15 [March 7, 2006 Letter].)

16 51. Despite these opposition efforts, the Department of Building and Safety
17 and the Planning Department eventually each concluded that the Permit had to be issued as a
18 ministerial duty, so the Department of Building and Safety finally issued the Permit.

19 52. Home Depot is informed and believes and thereon alleges that no similar
20 permit has ever been subject to such scrutiny, delay, and Councilmember interference.

21 53. Home Depot is informed and believes and thereon alleges that this scrutiny
22 and review was a direct result of the Councilmember's office cooperation with Home Depot's
23 opponents and competitor, and the City's willingness to empower Home Depot's competitor and
24 opponents to interfere with the City's ministerial duties. This conduct targeted Home Depot for
25 special discrimination with no lawful basis.

26 54. For example, in an analogous situation close to the Site, the City permitted
27 Auto Zone to remodel and reuse an existing building at 7448 West Foothill Boulevard in the
28 Specific Plan area pursuant to a ministerial building permit. Review under the Specific Plan was

1 not required. Auto Zone’s extensive remodel included, among other things, completely
2 remodeling the building’s interior and redoing the building’s façade. Still, that work, which was
3 more extensive than what Home Depot sought, was allowed to occur without interference and in
4 the ordinary course of normal City business.

5 55. Similarly, in another analogous situation close to the Site, the City
6 permitted World Gym to remodel and reuse an existing building at 6658 West Foothill
7 Boulevard in the Specific Plan area pursuant to a ministerial building permit. Review under the
8 Specific Plan was not required. World Gym’s remodel was also extensive, and included the
9 addition of a new room on the first floor, grading, and a new façade. Still, that work, which was
10 more extensive than that which Home Depot sought, was allowed to occur without interference
11 and in the ordinary course of normal City business.

12 **H. The Councilmember Continued To Oppose the Permit After Its Issuance and**
13 **Encouraged and Directed the Opponents’ Untimely Appeal of the Permit**

14 56. Despite the downsized remodel and the Planning Department’s conclusion
15 that Home Depot’s remodel and reuse of the K-mart Building was not subject to the Specific
16 Plan and was not subject to the California Environmental Quality Act (“CEQA”) review, the
17 Councilmember wrote to the Los Angeles City Attorney’s Office on July 24, 2006, the very day
18 the Permit was issued, stating: “I would appreciate it if you would review [the Permit’s
19 issuance] and advise me as to whether you believe the staff’s interpretations of City regulations
20 were consistent with applicable law.”

21 57. Home Depot is informed and believes and thereon alleges that the
22 Councilmember’s office also supported Home Depot’s opponents’ desire to appeal the Permit
23 and directed her own City staff to assist the opponents to do so while assuring the opponents that
24 she would influence the City process so that the City would ultimately reverse the Permit on
25 appeal.

26 58. On September 13, 2006, the Councilmember wrote to the Chairman of the
27 Sunland-Tujunga Neighborhood Council’s Design Advisory Committee, urging that body to file
28 a purported “appeal” from the Permit and highlighting the degree to which her office had been

1 influencing the City in carrying out its ministerial duties and in setting the groundwork for a
2 biased “appeal” process. The Councilmember wrote that her staff had been:

3 “working with you and the [NHDC] since July 25th to facilitate the filing of the
4 appeal documents. We suggested the specific issues that would be most likely to
5 succeed on appeal. We put NHDC in touch with the staff at the Department of
Building and Safety who can guide them through the process, and we arranged for
NHDC to receive necessary appeal forms.”

6 **I. The City Violated Home Depot’s Due Process Rights by Accepting an Incomplete
7 and Untimely Appeal**

8 59. Under Municipal Code Section 12.26.K, appeals from certain Department
9 of Building and Safety decisions may be made to the Planning Director, provided that they are
10 filed “within 15 days after the Department of Building and Safety has rendered a decision in
11 writing” and that they are “accompanied by ... a filing fee.” The Planning Department’s Master
12 Appeal Form itself reinforces the obligation to pay the filing fee on time, as it states that an
13 appeal is not complete unless mailing fees to the Better Technology Corporation (“BTC”) are
14 paid and a copy of the receipt for the BTC fees is submitted with the application.

15 60. On September 25, 2006, two months after the Permit was issued, the No
16 Home Depot Campaign and the Sunland-Tujunga Alliance (together, the “Opponents”), at the
17 Councilmember’s direction and with her support, requested that the Department of Building and
18 Safety issue a written decision justifying its issuance of the Permit.

19 61. On October 5, 2006, and in response to the Opponents’ request, the
20 Department of Building and Safety affirmed the Permit. The Department of Building and Safety
21 concluded that it properly issued the Permit because the remodeling work was not a “Project”
22 since: (i) it did not include “structural alterations,” as defined by Municipal Code Section 12.03;
23 (ii) it did not involve a change of use; and (iii) it did not involve the construction of a new
24 building or an addition to the K-mart Building.

25 62. On October 20, 2006, the Opponents submitted an appeal from the
26 Department of Building and Safety’s October 5 affirmation of the Permit pursuant to Municipal
27 Code Section 12.26.K to the Planning Department.

1 63. The Opponents did not submit their BTC fees until November 30, 2006, 40
2 days after the Department of Building and Safety's affirmation of the Permit. The Opponents'
3 submittal of BTC fees more than one month after they submitted their appeal rendered the appeal
4 untimely, and the City should have rejected it.

5 64. Home Depot is informed and believes and thereon alleges that the City
6 generally applies its rules as written so that an appeal filed without fees is not accepted, that an
7 appeal is only considered to have been made when the fees are paid, and that if the fees are not
8 paid by the end of the appeal deadline, then the appeal is not accepted, is treated as untimely, and
9 is not thereafter processed or considered.

10 65. Home Depot is informed and believes and thereon alleges that
11 Councilmember Greuel and/or her Planning Deputy improperly interfered with the Planning
12 Department's processing of the untimely appeal, including influencing the department to accept
13 the Opponents' tardy appeal in contravention of the City's rules.

14 66. The City violated Home Depot's constitutional due process and equal
15 protection rights by allowing its rules to be ignored and by allowing a City Councilmember to
16 interfere with a City department's quasi-judicial processes.

17 **J. The City Holds an Untimely Hearing on the Opponents' Untimely Appeal Violating**
18 **Home Depot's Procedural Due Process Rights; the Councilmember Testifies Against**
19 **Home Depot**

20 67. The City did not reject the Opponents' untimely and incomplete appeal as
21 it should have.

22 68. On January 19, 2007, ninety-one days beyond the Opponents' untimely
23 appeal and nearly six months after the Permit was issued, an assistant Zoning Administrator, Mr.
24 Gary Booher, held a public hearing to consider the Permit.

25 69. Just prior to the hearing, the Councilmember submitted a letter to Mr.
26 Booher that stated in part, "Together with the Sunland-Tujunga community, I have been *fighting*
27 the Home Depot project for more than two years."
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1 70. At the January 19, 2007 hearing on the Opponents' untimely appeal, the
2 Councilmember testified: "I believe the [Home Depot store] is the wrong project in the wrong
3 place at the wrong time ... I've been opposed to this Home Depot since I first learned about it in
4 October of 2004 ... a Home Depot is not an appropriate use for this site and every effort should
5 be made to locate...a Target or Kohl's here in this location."

6 71. Home Depot is informed and believes and thereon alleges that the
7 Councilmember inappropriately inserted herself into the Zoning Administrator's decision on
8 numerous other occasions, including, but not limited to, by a letter dated November 8, 2006, to
9 the Director of Planning for the Los Angeles Planning Department.

10 72. After extensive testimony on the matter, Mr. Booher, a purportedly
11 unbiased decision-maker but under heavy political pressure from the Councilmember and the
12 Do-it Center, indicated his contempt for Home Depot, stating that maybe Home Depot had
13 somehow broken the "social contract," and expressing his intent to look beyond the City's
14 ordinance's actual words to find the spirit of the law.

15 **K. The City Issued an Untimely and Invalid Decision on the Opponents' Appeal,**
16 **Violating Home Depot's Constitutionally Protected Rights**

17 73. The Zoning Administrator issued his decision granting the Opponents'
18 appeal and overturning the Department of Building and Safety's issuance of the Permit on
19 March 9, 2007, over two months late.

20 74. Under Municipal Code Section 12.26.K, "[t]he Director shall make his or
21 her decision within 75 days after the expiration of the appeal period or within an extended period
22 mutually agreed upon in writing by the applicant and the director." (Municipal Code
23 § 12.26.K.4.)

24 75. The appeal period expired on October 20, 2006. Seventy-five days from
25 October 20, 2006, is January 3, 2007.

26 76. The Zoning Administrator issued his decision on the Opponents' appeal on
27 March 9, 2007, 140 days after the appeal deadline and 65 days after the time for the decision
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1 expired under Section 12.26.K.4. Home Depot did not agree to any extension, and there is no
2 written agreement extending the period for the Zoning Administrator to act.

3 **L. The Zoning Administrator Erred and Abused His Discretion When He Substituted**
4 **His Judgment for the Department of Building and Safety’s Decision; The Zoning**
5 **Administrator Applied the Wrong Standard of Review**

6 77. The Zoning Administrator also applied the incorrect standard of review in
7 reaching his untimely decision.

8 78. Municipal Code Section 12.26.K.4 provides that the Planning Director
9 shall review the Department of Building and Safety’s decision for “error or abuse of discretion.”
10 (Municipal Code § 12.26.K.4.) Under the “error or abuse of discretion” standard of review “all
11 conflicts must be resolved in favor of the [prevailing party], and all legitimate and reasonable
12 inferences indulged in to upholding the [decision] if possible. It is an elementary ... principle of
13 law, that when a [decision] is attacked as being unsupported, the power of the ...
14 [decision-maker] begins and ends with a determination as to whether there is any substantial
15 evidence, contradicted or uncontradicted, which will support the [decision].” (*Western States*
16 *Petroleum Ass’n v. Super. Ct.* (1995) 9 Cal.4th 559, 572.)

17 79. Where a municipal code, like the Municipal Code here, sets forth a
18 standard of review for a reviewing administrative body, the reviewing commission, department
19 or other decision-maker cannot substitute its own standard of review.

20 80. Inexplicably, the Zoning Administrator’s review of the Department of
21 Building and Safety’s decision to issue the Permit was *de novo*—not for “error or abuse of
22 discretion” as required by Municipal Code Section 12.26.K.4.

23 81. The Zoning Administrator’s decision clearly departed from this standard of
24 review. The Zoning Administrator’s decision consisted of fewer than three pages of analysis.
25 The vast majority of his decision, 29 pages, consisted of quotes from the Opponents’ arguments,
26 which he adopted in a wholesale fashion.

27 82. The Zoning Administrator’s decision ignored the expert opinion of not less
28 than four experts. The Zoning Administrator ignored the Department of Building and Safety’s

1 expert opinion, ignored Home Depot’s engineering firm’s expert opinion, and ignored the
2 independent third-party expert opinion of two highly regarded individuals in their field,
3 Mr. Graham Dick and Mr. Kayvon Shakerin. Each and every one of these experts concluded
4 that the Permit did not authorize “structural alterations” as Municipal Code Section 12.03 defines
5 them. The Zoning Administrator admitted he was not an expert but still ignored all expert
6 evidence before him—including the City’s own expert—to reach the political outcome that the
7 Councilmember and Do-it Center wanted.

8 83. The City violated Home Depot’s constitutional due process and equal
9 protection rights by again allowing its rules to be ignored.

10 **M. The City Unjustifiably Stops All Work Under the Permit Despite Safety Risks,**
11 **Thereby Committing a Taking of Home Depot’s Property**

12 84. On March 10, 2007, the City issued a “Stop Work Order” that prevented
13 Home Depot from proceeding with the Permit-authorized work.

14 85. As of March 10, 2007, Home Depot had already spent over \$2 million in
15 direct reliance on the Permit. The remodel work was already 90 percent complete at that time.

16 86. The Stop Work Order irresponsibly rendered the building unsecured, open
17 to the elements, and vulnerable to damage. Despite that, the City wrongly denied Home Depot’s
18 requests to secure the building and to complete the necessary fire, life, and safety improvements.

19 87. The City’s revocation of the Permit when the remodel was still in progress
20 left the building in a state of no economically beneficial or productive use.

21 88. On or about May 21, 2007, Home Depot attempted to submit an
22 application to the Department of Building and Safety to secure the building and to undertake
23 various activities solely to keep the building from deteriorating. This work included connecting
24 the fire-suppression sprinkler system, weatherproofing the building, and properly ventilating the
25 building to prevent mold growth (“Lockdown Work”). The Department of Building and Safety
26 wrongfully refused even to accept Home Depot’s application.

1 89. On or about September 6, 2007, Home Depot again submitted an
2 application to the Department of Building and Safety to complete the Lockdown Work and,
3 again, the Department of Building and Safety refused to accept Home Depot's application.

4 90. The City's refusal to accept and process Home Depot's application to
5 complete the Lockdown Work together with its revocation of the Permit have denied Home
6 Depot all economically beneficial or productive use of the K-mart Building and will continue to
7 do so unless and until Home Depot is permitted to complete it.

8 **N. The North Valley Area Planning Commission Grants Home Depot's Appeal**

9 91. Home Depot timely appealed the Planning Director's untimely and legally
10 flawed decision to the North Valley Area Planning Commission on March 27, 2007.

11 92. On July 19, 2007, after a seven-hour public hearing, the North Valley Area
12 Planning Commission granted Home Depot's appeal.

13 93. At the North Valley Area Planning Commission hearing, many residents in
14 favor of a Home Depot store testified to the economic opportunity and revitalization that a Home
15 Depot store would bring.

16 94. The Councilmember testified at the July 19, 2007, North Valley Area
17 Planning Commission and urged it to deny Home Depot's appeal. The Councilmember's
18 Planning Deputy, Mr. Dale Thrush, did the same.

19 95. Mr. Preston Meyer, a Department of Building and Safety building
20 inspector, also testified at the July 19, 2007, North Valley Area Planning Commission hearing.
21 On information and belief, Home Depot alleges that Mr. Meyer did not testify in his official
22 capacity as a City employee, but as member of the general public, although he presented himself
23 as a City employee.

24 96. Home Depot is informed and believes and thereon alleges that Mr. Meyer
25 appeared at the hearing at the Councilmember's or her staff's urging or request. (Exhibit F
26 [Email exchange between Mr. Meyer and Councilmember's Office].)

27 97. The North Valley Area Planning Commission found that the Planning
28 Director erred and abused his discretion in overturning the Department of Building and Safety's

1 issuance of the Permit. Specifically, in oral findings, the North Valley Area Planning
2 Commission found that (a) the decision was untimely; (b) the Opponents' appeal was untimely;
3 and (c) substantial evidence supported the Department of Building and Safety's determination
4 that the remodel work under the Permit did not constitute a "Project" under the Specific Plan
5 because the work did not prolong the K-mart Building's life or increase its floor area.

6 98. The North Valley Area Planning Commission's decision was not further
7 appealable.

8 **O. The City Council Takes Jurisdiction Over the North Valley Area Planning**
9 **Commission's Decision at the Councilmember's Urging; the Councilmember Makes**
10 **the Motion, Is Its Sole Vocal Supporter, and Participates in the Vote**

11 99. Under Los Angeles City Charter Section 245, upon a two-thirds vote, the
12 City Council may assert jurisdiction over a decision by an area planning commission and review
13 that decision.

14 100. On July 31, 2007, in response to the Councilmember's motion, the City
15 Council voted to assert jurisdiction over the North Valley Area Planning Commission's decision
16 to reinstate the Permit. Asserting jurisdiction, the City Council itself was to rehear Home
17 Depot's appeal of the Planning Director's decision to revoke the Permit.

18 101. The Councilmember voted to assert jurisdiction despite her bias and was
19 the sole City Councilmember to express any serious interest in asserting City Council
20 jurisdiction.

21 102. The Councilmember had already made up her mind, had determined what
22 the conclusion should be, and thus could not act as an independent and objective decision-maker
23 to review the North Valley Area Planning Commission's decision. The Councilmember's
24 participation constituted a denial of Home Depot's right to due process.

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1 **P. Deferring to the Councilmember, the City Council Denies Home Depot's Appeal**
2 **and Revokes the Permit**

3 103. On August 7, 2007, the City Council's Planning and Land Use
4 Management Committee ("PLUM") held a public hearing on Home Depot's appeal of the
5 Planning Director's decision to revoke the Permit.

6 104. The Councilmember spoke at that hearing and urged that the Permit be
7 revoked.

8 105. The Councilmember stated: "[F]or me this is simply about playing by the
9 rules ... and if Home Depot had chosen to follow them, we would not be sitting here today."
10 However, that statement contradicted the Councilmember's previous statement to the North
11 Valley Area Planning Commission: "I have been fighting this Home Depot for nearly three
12 years. I believe it is the wrong project in the wrong place at the wrong time I have been
13 opposed to this Home Depot store since I first learned about it in October 2004."

14 106. The PLUM committee permitted the Councilmember, who is not on the
15 PLUM committee, to speak at length, whenever she wanted, and on any topic she wanted. Home
16 Depot is informed and believes and thereon alleges that the Councilmember could not and did
17 not act as an objective decision-maker in this action and inappropriately influenced the PLUM
18 committee's decisions.

19 107. After only brief deliberation, the two PLUM committee members present
20 both deferred to Councilmember Greuel and voted to recommend that the City Council deny
21 Home Depot's appeal.

22 108. On August 15, 2007, the entire City Council heard Home Depot's appeal of
23 the Planning Director's decision to revoke the Permit.

24 109. The Councilmember testified at length at the August 15, 2007, City
25 Council hearing on Home Depot's Permit.

26 110. After a brief public hearing on the matter, the City Council voted to revoke
27 Home Depot's Permit and to overturn the North Valley Area Planning Commission's decision.
28 The City Council voted to adopt the Zoning Administrator's findings, overturning the

1 Department of Building and Safety, as the City Council’s findings. By letter dated September
2 19, 2007, the Department of Building and Safety revoked the Permit.

3 111. The Councilmember voted to revoke the Permit and was the sole City
4 Councilmember to express any serious interest in revoking the Permit.

5 112. In light of her inability to act as an objective decision-maker (as noted
6 above), the Councilmember should not have made the motion to assert jurisdiction under City
7 Charter Section 245 and should not have participated in the vote on August 15, 2007. Had she
8 not done so, the North Valley Area Planning Commission’s action would have remained final
9 and the Permit would not have been revoked.

10 **Q. The Los Angeles Business Community Objected to the City’s Unfair Treatment of**
11 **Home Depot and Failure To Follow Its Own Rules**

12 113. The Los Angeles Area Chamber of Commerce (“Chamber”), the Valley
13 Industry and Commerce Association (“VICA”), and the Central City Association (“CCA”)
14 protested the City’s decision to revoke the Permit. (Exhibit G [letters].)

15 114. The Chamber, VICA, and CCA explained that allowing the City’s
16 ministerial building permit process to be hijacked by Home Depot’s opponents creates a
17 dangerous precedent that could block businesses from modernizing outdated buildings. They
18 explained that by allowing ministerial building permits to become political decisions, the City
19 would dissuade employers from investing in the City.

20 **FIRST CAUSE OF ACTION**

21 **(WRIT OF MANDATE—VIOLATION OF MUNICIPAL CODE)**

22 115. Home Depot incorporates in full all preceding paragraphs by this reference.

23 116. The City has a mandatory, non-discretionary duty to issue a building
24 permit under Municipal Code Section 91.106.4. “When the [Department of Building and Safety]
25 determines that the information on the application and plans is in conformance with [the
26 Municipal Code] and other relevant codes and ordinances, the department shall issue a permit.”

27 117. The Department of Building and Safety issued the Permit on July 24, 2006,
28 after concluding, in consultation with, and determination by, the Planning Department, that the

1 information on the Permit application and plans conformed with the Municipal Code, the
2 Specific Plan and all other relevant codes and ordinances.

3 118. The City Council's August 15, 2007, decision to revoke the Permit and
4 deny Home Depot's appeal was an abuse of discretion because the City did not proceed in the
5 manner required by the law, its order of decision is not supported by the findings, and the
6 findings are not supported by the evidence.

7 119. Specifically, the City Council abused its discretion decision because:
8 (1) the Zoning Administrator erred and abused his discretion in applying the wrong standard of
9 review under Municipal Code Section 12.26.K; (2) the Zoning Administrator erred and abused
10 his discretion in issuing a decision on an untimely appeal pursuant to Municipal Code
11 Section 12.26.K; (3) the Zoning Administrator erred and abused his discretion in issuing an
12 untimely decision pursuant to Municipal Code Section 12.26.K; and (4) the Zoning
13 Administrator erred and abused his discretion in finding that the Department of Building and
14 Safety erred and abused its discretion in issuing the Permit.

15 120. Because all criteria were met and findings made for the Permit's issuance,
16 there was no legal basis for the City to revoke the Permit. Accordingly, the City's revocation of
17 the Permit was arbitrary, capricious and an abuse of discretion. The City's revocation of the
18 Permit constitutes a direct violation of the Municipal Code.

19 121. Pursuant to California Code of Civil Procedure Section 1085, this Court is
20 authorized to issue a writ of mandate to the City to compel it to perform an act the law
21 specifically enjoins. Here, the Municipal Code specifically requires the City to issue the permit.
22 The Municipal Code specifically requires the City not to rescind the Permit. As such, the Court
23 should issue a writ of mandate to the City ordering it to (1) rescind the revocation of the Permit,
24 (2) rescind the Stop Work Order, and (3) reinstate the Permit.

25 **SECOND CAUSE OF ACTION**

26 **(WRIT OF MANDATE—UNLAWFULLY BIASED PROCESS)**

27 122. Home Depot incorporates in full all preceding paragraphs by this reference.

28 123. Under Code of Civil Procedure Section 1094.5(b), courts inquire into

1 whether a challenged administrative proceeding provided a “fair trial.”

2 124. The process by which the City revoked the Permit was an administrative,
3 quasi-judicial process involving the determination and application of facts to an individual case.

4 125. A “fair trial” for a quasi-judicial administrative proceeding requires, at a
5 minimum, that there be no “unacceptable probability of actual bias on the part of those who have
6 actual decisionmaking powers.” *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 483
7 (quoting *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1236.)

8 126. On information and belief, the City’s administrative process used to revoke
9 the Permit was directed and controlled by Councilmember Greuel, whose words and actions
10 showed an “unacceptable probability of actual bias.” The Councilmember’s early prejudgment
11 and bias against Home Depot are detailed above, and include: (a) in February 2005, the
12 Councilmember wrote to Home Depot, “[Y]ou have made a very serious mistake. I have
13 instructed my staff to use the full resources of my office and appropriate city departments to
14 oppose your [project].”; (b) on January 17, 2007, the Councilmember wrote to Mr. Booher, the
15 individual charged with determining the Permit’s validity, “I have been fighting the Home
16 Depot...for more than two years...I ask you to find in *our* favor...” (emphasis added); and (c) on
17 January 19, 2007, the Councilmember testified before Mr. Booher, “I believe the [Home Depot
18 store] is the wrong project in the wrong place at the wrong time...[E]very effort should be made
19 to locate...a Target or Kohl’s here in this location.” Despite that, the Councilmember acted as
20 the City’s determinative decision maker in revoking the Permit in a quasi-judicial process.

21 127. On information and belief, Councilmember Greuel’s personal role in the
22 Permit revocation process was the determinative factor that resulted in the City improperly
23 revoking the Permit. For example, On July 24, 2007, the Councilmember introduced a motion
24 asking the City Council to vacate the North Valley Area Planning Commission’s decision
25 granting Home Depot’s appeal and review Home Depot’s appeal itself. On July 31, 2007, the
26 Councilmember voted to assert jurisdiction and urged her fellow Councilmembers to do the
27 same, which they did. On August 7, 2007, the Councilmember implored the PLUM Committee
28 to recommend denying Home Depot’s appeal, which it did. On August 15, 2007, the

1 for an injury of that kind proximately caused by its failure to discharge the duty.” (Cal. Gov.
2 Code § 815.6.)

3 142. The City’s issuance of the Permit was a mandatory, non-discretionary duty
4 under Municipal Code Section 91.106.4.1.

5 143. Home Depot’s reliance on the City’s Permit issuance proximately caused
6 its injury in an amount to be proven at trial, but in no event less than Ten Million Dollars
7 (\$10,000,000).

8 144. Home Depot is currently exhausting its remedies under Charter
9 Section 350 and City of Los Angeles Administrative Code Section 5.169. Should the City reject
10 Home Depot’s claim for damages, Home Depot will amend this Petition and Complaint to
11 include a claim for injuries pursuant to Section 815.6 of the Government Tort Claims Act.

12 145. By revoking the validly issued Permit, the City failed to perform a
13 mandatory duty and thus is liable for Home Depot’s resulting injuries pursuant to Section 815.6
14 of the Government Tort Claims Act.

15 **SIXTH CAUSE OF ACTION**

16 **(42 U.S.C. § 1983 AND 42 U.S.C. § 1988(b))**

17 146. Home Depot incorporates in full all preceding paragraphs by this reference.

18 147. Home Depot is informed and believes and thereon alleges that the City and
19 the City Council are “persons” within 42 U.S.C. Section 1983. The City’s wrongful, unfair, and
20 arbitrary application of Municipal Code Sections 91.106.4.1 and 12.26.K and revocation of the
21 Permit deprived Home Depot of rights and privileges secured by the United States Constitution
22 and the laws of the United States. The City’s actions were arbitrary and capricious and were
23 made under the color of the Municipal Code. Accordingly, the City has violated Home Depot’s
24 due process rights and equal protection rights as secured by the California and United States
25 Constitutions (Cal. Const. art. I, § 7(a); U.S. Const. amend. XIV, § 1) and are liable to Home
26 Depot pursuant to 42 U.S.C. Section 1983.

27 148. A clear and actual controversy exists between the City and Home Depot
28 about the City’s failure to lawfully apply the Municipal Code. Home Depot contends that the

1 City has violated Home Depot's due process and equal protection rights while the City contends
2 that there have been no violations.

3 **Due Process Violations**

4 149. Procedural due process principles require that quasi-judicial administrative
5 proceedings be conducted without bias or partiality and in an objective manner.

6 150. A Councilmember has a duty to recuse herself from consideration of
7 matters in which her "private, personal interests may conflict with [her] official duties." (*Clark*
8 *v. City of Hermosa Beach* (1996) 48 Cal. App. 4th 1152, 1171 (quoting 64 Ops. Cal. Atty. Gen.
9 795, 797 (1981)).)

10 151. The City Council's decision on Home Depot's appeal involved the
11 determination and application of facts peculiar to an individual case and were therefore
12 "quasi-judicial" acts, which are subject to procedural due process requirements, regardless of the
13 guise they may take.

14 152. Procedural due process in the administrative setting requires that the
15 hearing be conducted before a reasonably impartial, non-involved reviewer.

16 153. The broad applicability of administrative hearings to the various rights and
17 responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in
18 the administrative adjudication arena, militate in favor of assuring that such hearings are fair.

19 154. The July 31, August 7, and August 15, 2007 City Council hearings were
20 not conducted in a reasonably fair and impartial manner because Councilmember Greuel was not
21 objective with respect to Home Depot and the Permit, and nonetheless participated in the
22 proceedings regarding Home Depot's appeal regarding the same.

23 155. Councilmember Greuel's involvement establishes an unacceptable
24 probability of actual bias on the part of those who have actual decision-making power.

25 156. Home Depot is entitled to an order rendering void the City Council's
26 July 31, August 8, and August 15, 2007 determinations. (Cal. Civ. Code §§ 1085, 1094.5)

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1 **Equal Protection Violations**

2 157. The City and City Council, acting under the color of State law, violated
3 Home Depot's right to equal protection of the laws, in that they failed to process Home Depot's
4 Permit application and the administrative process that followed in the same manner as other
5 similarly situated building permit applicants in the City, as the following actions demonstrate:

6 (a) The City denied Home Depot's appeal although the Opponents'
7 appeal was untimely. Home Depot is informed and believes and thereon alleges that the
8 City routinely dismisses untimely appeals.

9 (b) The City denied Home Depot's appeal although the Planning
10 Director's decision was untimely since it was issued 140 days after the appeal period
11 expired, which was 65 days late. Home Depot is informed and believes and thereon
12 alleges that the City routinely requires decisions by the Planning Director under the
13 Municipal Code to be made within 75 days.

14 (c) The City Council asserted jurisdiction over the North Valley Area
15 Planning Commission's decision granting Home Depot's appeal. Home Depot is
16 informed and believes and thereon alleges that the City has never asserted jurisdiction
17 pursuant to City Charter Section 245 over a ministerial building permit where an
18 opponent brings the initial challenge and not the building permit applicant itself.

19 158. Home Depot is informed and believes and thereon alleges that that there is
20 no legitimate or rational basis for the City's disparate treatment and that the City's conduct is
21 irrational and arbitrary.

22 **Each Civil Rights Claim**

23 159. To remedy the City's violations of Home Depot's due process and equal
24 protection rights, Home Depot requests a declaration of the parties' respective rights and duties,
25 including that the City has violated Home Depot's rights to due process and equal protection as
26 set forth above.

27 160. Such a declaration is a necessary and proper exercise of the Court's power
28 at this time under the circumstances, in order to prevent further actions by the City that would

1 deprive Home Depot of rights and privileges and violate the due process and equal protection
2 requirements of the California and United States Constitutions.

3 161. Home Depot cannot be fully compensated in damages for the harms
4 incurred from the City's violations of law and thus has no adequate remedy at law for those
5 continuing and ongoing violations. Requiring Home Depot to undertake a discretionary approval
6 process and environmental review under the CEQA, and apply for a new building permit to
7 complete the work authorized under the Permit, will force Home Depot to suffer grave and
8 irreparable harm.

9 162. Because of the foregoing conduct, the City has a clear and present duty to
10 (1) rescind the revocation of the Permit, (2) rescind the Stop Work Order, and (3) reinstate the
11 Permit.

12 163. Home Depot also seeks its reasonable attorneys' fees pursuant to 42 U.S.C.
13 Section 1988(b) pursuant to its claims under 42 U.S.C. Section 1983.

14 **SEVENTH CAUSE OF ACTION**

15 **(INVERSE CONDEMNATION)**

16 164. Home Depot incorporates in full all preceding paragraphs by this reference.

17 165. Home Depot holds a valid leasehold interest in the Site.

18 166. On March 10, 2007, the Department of Building and Safety issued a "Stop
19 Work Order" to Home Depot, which prevented Home Depot from completing the work
20 authorized under the Permit.

21 167. As the "Stop Work Order" was issued mid-construction, Home Depot was
22 left with a building and the Site that had no economically viable use.

23 168. The Department of Building and Safety denied Home Depot's application
24 to complete the Lockdown Work.

25 169. In its current state, the K-mart Building has no economically viable use.

26 170. The City's revocation of the Permit and its refusal to issue a building
27 permit for the Lockdown Work is not a normal delay in the development process. Rather, the
28 Permit's revocation and the City's refusal to authorize the Lockdown Work is a result of the

1 City's infringement of Home Depot's constitutional rights and its violations of the Municipal
2 Code.

3 171. The City's revocation of the Permit and its refusal to issue a building
4 permit for the Lockdown Work was so unreasonable from a legal standpoint that it was arbitrary,
5 not in furtherance of any legitimate governmental objective, and for no other purpose than to
6 delay the development of a Home Depot store at the Site.

7 172. As a result, the City's revocation of the Permit, its delay in reissuing the
8 Permit, and its refusal to authorize the Lockdown Work constitute a temporary taking requiring
9 compensation in an amount to be proven at trial, but in no less than Ten Million Dollars
10 (\$10,000,000).

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Home Depot prays for judgment on its Petition and Complaint as
13 follows:

14 1. That this Court issue a peremptory writ of mandate, commanding the City
15 to (1) rescind the revocation of the Permit; (2) rescind the Stop Work Order; (3) reinstate the
16 Permit; and (4) vacate its August 15, 2007 decision revoking the Permit.

17 2. That this Court declare that the City has failed to act within the bounds and
18 provisions of the Municipal Code and the California and United States Constitutions.

19 3. That this Court declare that the City violated Home Depot's procedural due
20 process and equal protection rights as protected under the Constitutions of the United States and
21 State of California and order that the City reissue the Permit and award attorney fees pursuant to
22 42 U.S.C. Section 1988(b).

23 4. That this Court award an amount not less than Ten Million Dollars
24 (\$10,000,000) in accordance with California Government Code Section 815.6.

25 5. That this Court award an amount not less than Ten Million Dollars
26 (\$10,000,000) to compensate Home Depot for the City's temporary taking of its property.

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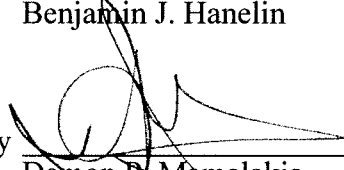
6. That this Court award Home Depot costs and fees incurred in procuring the relief sought in this Petition and Complaint, including, but not limited to, attorneys' fees under California Code of Civil Procedure Sections 1021.5 and 1036.

7. For such further relief as the Court deems just and proper.

Dated: November 9, 2007

LATHAM & WATKINS LLP

James L. Arnone
Damon P. Mamalakis
Benjamin J. Hanelin

By 
Damon P. Mamalakis
Attorneys for Petitioner and Plaintiff
THE HOME DEPOT U.S.A., INC.

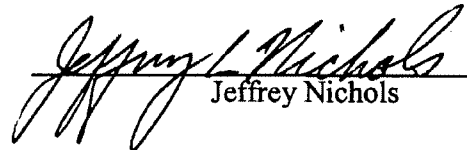
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VERIFICATION
[CCP §§ 446, 527, 1086]

I, Jeffrey Nichols, am the Director of Real Estate for Petitioner and Plaintiff, The Home Depot U.S.A., Inc., in this action and am making this verification on its behalf. I have read the foregoing Verified Petition for Writ of Mandate; Complaint for Damages and Declaratory Relief and am familiar with its contents. All facts alleged in the Petition and Complaint are either true of my own knowledge, or I am informed and believe them to be true, and on that basis allege them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 8th day of November, 2007 at Los Angeles, California.



Jeffrey Nichols

Exhibit A

005 FRI 10:29 FAX 213 473 5973 Councilmember Greuel

002/003



WENDY GREUEL
COUNCILMEMBER, SECOND DISTRICT
CITY OF LOS ANGELES

CITY HALL
200 N. Spring Street
Room 430
Los Angeles, CA 90012
(213) 485-3391
Fax (213) 480-7895

NORTH HOLLYWOOD
6350 Laurel Canyon Blvd., #201
North Hollywood, CA 91606
(818) 755-7676
Fax (818) 755-7862

SUNLAND-TUJUNGA
7747 Footwell Boulevard
Tulsa, CA 91042
(818) 352-3287
Fax (818) 352-8563

February 15, 2005

Mr. Michael Abbate
Home Depot USA, Inc.
3800 West Chapman Avenue
Orange, CA 92868

Re: Proposed Home Depot Store in Sunland, California

Dear Mr. Abbate:

I am a member of the Los Angeles City Council, and I represent the Sunland-Tujunga area where Home Depot proposes to locate a new store.

I understand that you plan to remodel or rebuild the former K-Mart building for use as a Home Depot. I also understand that you failed to consult with the Sunland-Tujunga Neighborhood Council and my office before filing your application for a Project Permit Compliance. I cannot overstate how offensive your actions are to the Sunland-Tujunga community and to me.

Several months ago, my staff advised your consultants that a free-standing Home Depot on the K-Mart site was unacceptable and that the zone changes needed for a new building would be vigorously opposed. Your consultants were also advised that the people of Sunland-Tujunga are very reasonable and are likely to support a project that addresses real community needs such as a department store, movie theaters and the like.

My constituents play a critical role in land use decisions in my district. In fact, your consultants were told about a mixed use project where the community ultimately insisted that the developer build a project that was significantly *larger* than the project he originally proposed. That point was not missed by the consultants, because one of them attended the mixed use project's public hearing and saw, first hand, the kind of contribution this community can offer when it is involved in the process.

COMMITTEE ASSIGNMENTS
CHAIR: HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE
VICE CHAIR: AUDITS AND GOVERNMENTAL EFFICIENCY COMMITTEE
MEMBER: PLANNING AND LAND USE MANAGEMENT COMMITTEE



I want you to understand that, while there is still time to correct your course, you have made a very serious mistake. I have instructed my staff to use the full resources of my office and appropriate city departments to oppose your Project Permit Compliance on all legally recognizable grounds. That means that any project permit that may be issued will be appealed, and if necessary, I will bring the matter before the full City Council. At the same time, the community of Sunland-Tujunga is mobilizing to oppose the project, and I understand there are plans to lawfully picket your facility if it ever opens.

Having expressed my great displeasure with your actions to date, I see two ways in which Home Depot can deal with the matter: it can engage the Sunland-Tujunga community in a discussion of the project, or Home Depot can withdraw its application and abandon the project. Any other course will be met with maximum opposition.

I urge you to seriously consider these options.

Very truly yours,



Wendy Greuel
Councilmember, 2nd District
Los Angeles City Council

Exhibit B

ABRAMS *Creative*

Services Successes Profile Cli

LOWE'S HOME IMPROVEMENT



Do it center

JPK Barsana Dham



Do-It Centers of California.

We advised and successfully assisted this California chain of hardware stores to prevent encroachment by competing big box stores in their geographic areas.



JPK Barsana Dham.

We are advising this Hindu religious organization to help them gain acceptance in the local community and assist them with PR and Public Affairs in successfullv

"Al Abrams' challenges o to his level. tough to do! has always k my toes. Try one step ah Impossible!"

Beryn Hammil, The B. Hammil Interior Design, Member San Francisco, C



PR with IMPACT



Public Policy

Copyright Abrams Creative 2005

Exhibit C

Sunland Home Depot Chronology

Home Depot's application for a ministerial permit to remodel a vacant Kmart store at 8040 Foothill Boulevard was vetted more thoroughly by the City and the opposition than any other similar permit. Below is a chronology of this nearly two year process.

- **August 2005:** Planning Department writes letter to Councilmember Greuel explaining that remodeling is not a "Project" under the Foothill Boulevard Corridor Specific Plan.
- **November 2005:** Home Depot submits application to City to remodel vacant Kmart.
- **November 2005 to May 2006:** 22 meetings between Home Depot, Council Office and the Planning and Building and Safety Departments reviewing opponents' comments on Home Depot's plans.
- **May 23, 2006:** Home Depot revises remodeling plans four times based on direction from Planning and Building and Safety. Due to opposition, all elements of the proposed remodel that were not approved by Planning and Building and Safety were eliminated.

Elements **removed** from remodeling plans included:

- Installation of new roll-up metal doors: existing doors retained
 - Repair of exterior concrete slab: interior floor only
 - Resurfacing and repair of parking lot: existing Kmart parking lot reused
 - Increase of garden center fence height from 12 to 20 feet: fence kept the same height
 - All work in auto repair area: area not being used
- **May 24, 2006 to July 23, 2006:** Further meetings with the Planning and Building and Safety Departments.
 - **July 24, 2006:** Remodeling permit, after Planning and Building and Safety Departments sign-off, issued 8 months after application submitted. Planning Department sign-offs attached. Daniel Scott, Principal Planner for Valley, and Anna Vidal, City Planning Associate.
 - **July 2006 – March 2007:** Home Depot utilizes permit and spends over \$2 million to 90% completion.
 - **September 25, 2006:** Two months after the remodeling permit is issued, the opponents ask the Department of Building and Safety to justify its issuance in writing.
 - **October 5, 2006:** Department of Building and Safety affirms the permit's issuance with a written justification.
 - **October 20, 2006:** The opponents submit a delayed and improperly filed appeal of the remodeling permit with the Planning Department three months after permit was issued.
 - **March 9, 2007:** Assistant Zoning Administrator Gary Booher issues a delayed decision overturning Department of Building and Safety's issuance of the permit; stop work order issued.
 - **July 19, 2007:** Area Planning Commission affirms Department of Building and Safety's issuance of the permit and grants Home Depot's appeal nearly a year after permit was issued.

Exhibit D

From: Hector Buitrago
To: Abigail Greenspan; Dale Thrush; Rosalind Wayman
CC: David Lara; LINCOLN LEE; Nick Delli Quadri
Date: 7/24/2006 12:50 PM
Subject: Re: Foothill Home Depot

It's refreshing to know that ultimately there was agreement. Thank you.

Hector Buitrago

>>> Dale Thrush 7/24/2006 11:04 AM >>>

Thanks Hector. Just before the July 4 weekend, CD-2 learned that Home Depot's revised plans were submitted to Planning and LADBS. We delivered a set of the plans to community members on July 5 and asked them to submit any comments they may have to Dan Scott in Planning as soon as possible. Over the past few months we arranged for community members to meet with Planning staff to discuss the matter on two separate occasions. The community's comments on the revised plans were faxed to Dan Scott early Wednesday morning (7/19). Dan reviewed the comments and conferred with LADBS staff.

It is my understanding that, based on his review of the revised plans and comments from LADBS staff and community members, Dan concluded that there are no unresolved issues and that the proposed alterations to the building did not create a "Project" within the definition contained in the Foothill Blvd. Corridor Specific Plan. Accordingly, Dan signed off for the Planning Department and advised LADBS staff of his action.

I understand that the action by the Planning Department concluded the discretionary phase of the application and that it will be handled henceforth by LADBS as a ministerial application for a building permit.

Dale

>>> Hector Buitrago 7/21/2006 4:03 PM >>>

I have just received notification from Lincoln Lee that the Home Depot has revised the plans and Planning has signed off and stamped the plans purportedly with the knowledge of the Council office's staff. The applicant has made arrangements to come on Monday with the expectation of getting the permit issued. Please let us know if you have been made aware of the situation and/or any unresolved issues remain. Thank you.

Hector Buitrago

Exhibit E



WENDY GREUEL
COUNCILMEMBER, SECOND DISTRICT
CITY OF LOS ANGELES
PRESIDENT PRO TEMPORE

CITY HALL
200 N. Spring STREET
ROOM 475
LOS ANGELES, CA 90012
(213) 473-7002
FAX (213) 680-7895

NORTH HOLLYWOOD
6350 LAUREL CANYON BLVD., #201
NORTH HOLLYWOOD, CA 91606
(818) 755-7676
FAX (818) 755-7862

SUNLAND-TUJUNGA
7747 FOOTHILL BOULEVARD
TUJUNGA, CA 91042
(818) 352-3287
FAX (818) 352-8563

March 7, 2006

Ms. Gail Goldberg
Director of City Planning
200 North Spring Street, 5th Floor
Los Angeles, CA 90012

Mr. Andrew Adelman
General Manager, Dept. of Building and Safety
201 North Figueroa
Los Angeles, CA 90012

Re: Proposed Home Depot Store at 8040 Foothill Blvd.

Dear Mr. Adelman and Ms. Goldberg:

Home Depot USA, Inc. is pursuing two separate applications aimed at locating a Home Depot store at 8040 Foothill Blvd. in Sunland. The first seeks a Director's Determination, under the provisions of the Foothill Blvd. Corridor Specific Plan, approving a new building and garden center. The second seeks a building permit for tenant improvements which would enable Home Depot to move into the former K-Mart building on the site.

I do not believe that the Sunland-Tujunga community is well served by either proposal. The community already has a number of options for purchasing home improvement products, but it has no options for purchasing general merchandise. The Sunland-Tujunga community desperately needs a department store such as Target, Kohl's or the like, and I have pledged to leave no stone unturned in my effort to attract a general merchandise store to the site.

It is my understanding that your departments generally coordinate their efforts in cases where building permits are applied for within the Specific Plan area. That coordination is designed to assure that projects receive appropriate scrutiny under the Specific Plan before building permits are issued. Since the Home Depot building permit application is extremely complex – containing approximately 100 sheets of drawings – I believe it is essential that your two departments work closely together to determine whether the scope of the application rises to the level of a "Project" as defined in the Specific Plan. As you know, a determination that the Home Depot building permit application constitutes a Project would trigger a review under the Specific Plan, including a review of traffic, noise and air quality impacts.

COMMITTEE ASSIGNMENTS
CHAIR: TRANSPORTATION COMMITTEE
VICE CHAIR: BUDGET & FINANCE COMMITTEE
MEMBER: AUDITS & GOVERNMENTAL EFFICIENCY COMMITTEE
MEMBER: ENERGY AND THE ENVIRONMENT COMMITTEE



It is my hope that your staffs' review of the matter will result in a conclusion that the remodel proposal is a Project and that appropriate environmental review is required. I urge you to create a review team for the remodel project as soon as possible so that we can have an early determination of this crucial issue.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Wendy Greuel", written over a horizontal line.

Wendy Greuel
Councilmember, 2nd District
Los Angeles City Council

Exhibit F

From: Dale Thrush
To: Hector Buitrago, Preston MEYER
Date: 7/23/2007 11:54 AM
Subject: Re: Home Depot

Thanks Preston.

Hector - could you please call me to discuss timing.

Dale

-----Original Message-----

From: Preston MEYER
To: Dale Thrush <Dale.Thrush@lacity.org>
Creation Date: 7/23 11:33 am
Subject: Re: Home Depot

No problem, Dale-

At present, all information regarding the Home Depot site needs to be coordinated by Hector Buitrago at 213-482-0040. He should be able to verify permit status, needed actions, and time lines for you.

Thanks, Preston

>>> Dale Thrush 7/20/2007 1:03 PM >>>
Hi Preston,

I really appreciated your testimony last night. Thank you so much for staying.

Councilwoman Greuel has decided to ask the Council to assert jurisdiction over the case, so we have a timing issue. Could you please tell me whether LADBS plans to reissue the Home Depot permits based on last night's action or wait until the Commission's written action is released? Thanks.

Dale

Exhibit G



Los Angeles Area
Chamber of Commerce

July 17, 2007

Honorable Commissioners
North Valley Area Planning Commission
200 North Spring Street, Room 532
Los Angeles, CA 90012

Re: 8040 Foothill Boulevard: Agenda Item No. 3 at July 19, 2007 Public Hearing (Case No. DIR 2006-9072 BSA-1A; Building Permit No. 06016-10000-03354);

Dear Honorable Commissioners:

On behalf of the Los Angeles Area Chamber of Commerce (the "Chamber"), I am writing to state the Chamber's strong concern over the Zoning Administrator's decision in the above matter. The Zoning Administrator's decision will have devastating consequences for commerce in this City and for the operation of the Planning Department and Los Angeles Department of Building and Safety ("LADBS"). However, the North Valley Area Planning Commission has a chance to right the ship by affirming LADBS's issuance of Home Depot's tenant improvement building permit and granting Home Depot's appeal.

The Chamber, founded in 1888, is a nonprofit business advocacy organization representing approximately 1,600 member companies throughout the Southern California region. The Chamber champions economic development and quality of life issues, especially as they relate to planning, land use, housing, and sustainable growth. Therefore, Home Depot's appeal is very important to the Chamber and its members.

The issue at the core of this appeal is whether LADBS will be allowed to do its job and exercise its expertise and judgment in issuing tenant improvement building permits. A tenant improvement building permit is a ministerial permit that allows a business that moves into an existing building to remodel that building to meet its needs. These permits allow businesses to open quickly and cost effectively, while ensuring that whatever changes are made to an existing building meet the City's building standards. These permits should be encouraged to speed up reinvestment in and the revitalization of areas throughout the City. This is especially important in Sunland-Tujunga, an area that has a commercial corridor on Foothill Boulevard with a number of vacant and dilapidated structures with little future investment in sight. The City has vested LADBS with the power to award these and other building permits because LADBS is where the City's expertise on building and safety issues is housed.

The Zoning Administrator, acting on the Planning Director's behalf, by his March 9, 2007 decision, has unilaterally decided that the Planning Department is now the expert on these issues despite the fact that the Municipal Code says otherwise. Section 12.26.K of the Municipal Code provides that the Planning Director may review certain LADBS decisions for "error or abuse of discretion." This means that LADBS's decision is to be presumed correct, that great deference

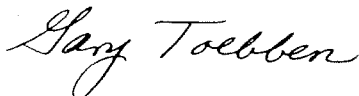
should be given to it, and that the decision cannot be overturned solely because the Planning Director disagrees with it. Under this standard, LADBS's decisions regarding tenant improvement building permits are consistently and fairly applied. However, where the Zoning Administrator, acting on behalf of the Planning Director, supplants LADBS's judgment for his own, as was the case here, all certainty and consistency is lost. The Zoning Administrator's decision in this case, therefore, sets a dangerous precedent for the City that must not be allowed to stand.

The danger is twofold. First, businesses will be discouraged from applying for and/or exercising their ministerial tenant improvement permits for fear that they will be challenged and overturned under this Zoning Administrator's "*de novo*" standard. Second, under this Zoning Administrator's "*de novo*" standard, project opponents and competitors have a potentially successful method of shutting down projects, as is the case here where a competing home improvement store chain is driving the appeal of Home Depot's tenant improvement permit. Section 12.26.K contains an "abuse of discretion" standard because LADBS's decision to grant a ministerial permit should only be overturned in the most egregious of circumstances—for example, where there is no evidence supporting an LADBS decision. This will be the rare case. In fact, we are not aware of another building permit being overturned in this manner in the history of the City, and it would set a disappointing precedent to allow a competitor to use the appeal process to overturn a building permit now.

If how Home Depot has been treated is indicative of the delay that a project opponent or competitor can bring to bear through Section 12.26.K appeals, then the Planning Department, LADBS, and each of the Area Planning Commissions will have countless more of these appeals to handle in the future. A quick look at the numbers says a lot. LADBS issues 142,000 permits a year. Each permit that requires LADBS to interpret Chapter I of the Municipal Code is subject to appeal to the Planning Director under Section 12.26.K. Thus, if only 10 percent of all permits issued by LADBS require some interpretation of the Chapter I, which is a conservative estimate, approximately 14,200 building permits each year would be subject to appeal to the Planning Director. If only 5 percent of the appealable building permits are actually appealed, LADBS and the Planning Director will be faced with 710 appeals to process a year at a time when both departments are already overtaxed. Unless the North Valley Area Planning Commission puts a stop to this potentially dangerous precedent, business across the City will suffer and work within LADBS and the Planning Department will come to a standstill.

For the foregoing reasons, the Chamber asks the North Valley Area Planning Commission to support LADBS's issuance of Home Depot's tenant improvement permit and grant Home Depot's appeal. Please contact Public Policy Manager Vanessa Rodriguez at 213.580.7531 with additional questions.

Sincerely,



Gary Toebben
President & CEO



July 12, 2007

Members of the North Valley
Area Planning Commission
200 North Spring Street, Room 532
Los Angeles, CA 90012

RE: 8040 West Foothill Blvd. (DIR 2006-9072 BSA-1A; Building Permit No. 06016-10000-03354); Agenda Item No. 3 at July 19, 2007 Public Hearing.

Dear Honorable Planning Commissioners:

On behalf of the Valley Industry and Commerce Association (VICA), I am writing to express concerns about the City's handling of Home Depot's building permit for tenant improvements for the existing building at 8040 Foothill Boulevard in the Sunland community of the City of Los Angeles. As you know, the City issued Home Depot a permit to remodel the abandoned Kmart store almost a year ago, yet the issue of whether it was properly issued is still not settled. This is a disservice to Home Depot in particular and to the business community as a whole.

VICA has a vested interest in ensuring that Valley businesses are treated fairly in the City and that there is certainty in the permitting process. Home Depot is an important part of the retail community in Los Angeles, with more than 2,000 employees in 13 stores, each of which generates more than \$1 million annually in tax revenues for the City, including funds for police and fire personnel. However, it appears that Home Depot is being treated unfairly with respect to the remodeling of the existing building at 8040 Foothill Boulevard.

The City issues thousands of tenant improvement building permits every year. Tenant improvement building permits are vitally important to the business community because they allow new businesses to reoccupy existing spaces at relatively minimal cost. Without these ministerial permits, businesses could not quickly and efficiently reoccupy vacant buildings, which in turn would both unnecessarily increase the cost of doing business in the City as well as lead to a larger number of vacant and deteriorating buildings. Moreover, Los Angeles has lost hundreds of retail stores—and millions of dollars in tax revenues and thousands of jobs—in recent years to neighboring cities that have a more inviting business climate and more certainty in their permit processes.

The process Home Depot has been forced to go through and the costs it has had to bear in doing so, however, constitute time and money that most businesses in this City cannot afford. No business should be singled out by the City for "special" consideration

Valley Industry and Commerce Association 5121 Van Nuys Blvd., Suite 203, Sherman Oaks, CA 91403
(818) 817-0545 • FAX: (818) 907-7934 • www.vica.com • vica@vica.com

because a small, but vocal, group of community opponents allegedly funded by a competitor does not want to see it opened. However, this appears to be exactly what has happened here, and this strategy could be repeated in other parts of the City.

VICA is also concerned by the precedent that this process may establish—and the long term impacts on the City's ability to lure large employers to the Valley's job centers. Businesses only prosper when there is certainty in the process. It is unheard of for a business to have to wait nearly nine months to obtain and act on a ministerial building permit, and most that would be forced to do so would abandon their business plans due to losses sustained from the delay. Businesses in the Valley and throughout the City need to know that the Municipal Code will be interpreted consistently and that they will have certainty in the permitting process. This process has created a situation where the Municipal Code is being applied inconsistently and without predictability because this action is effectively challenging the Building Department's interpretation of its own provisions. LADBS's decision to issue the tenant improvement building permit to Home Depot was consistent with its interpretation of the Municipal Code, was based on substantial evidence, and was not an abuse of discretion.

VICA respectfully urges the North Valley Area Planning Commission to affirm LADBS's issuance of the tenant improvement building permit and grant Home Depot's appeal.

Thank you for your consideration.

Sincerely,



Brendan Huffman
President & CEO