

ORDINANCE NO. 2008-15

AN ORDINANCE OF THE CITY OF BEE CAVE, TEXAS AMENDING THE DEVELOPMENT STANDARDS FOR A PORTION OF THE PROPERTY DESCRIBED AS LOT 1, BLOCK B HOME DEPOT SUBDIVISION REPLAT WHICH PROPERTY IS DEPICTED IN EXHIBIT "A" ATTACHED HERETO AND WHICH PROPERTY IS CURRENTLY ZONED PLANNED DEVELOPMENT DISTRICT WITH A BASE ZONING OF COMMERCIAL; APPROVING AN AMENDED CONCEPT PLAN, ATTACHED AS EXHIBIT "B"; PROVIDING FOR AMENDED SPECIAL DEVELOPMENT STANDARDS AND CONDITIONS, ATTACHED AS EXHIBIT "C"; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PROPER NOTICE AND MEETING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Owner of the land described herein and depicted in Exhibit "A" attached hereto (the "Property") has filed an application to amend certain development standards associated with the Property herein described which Property was previously zoned in Ordinance No. 00-11-14C as a Planned Development District with a Commercial District base zoning in accordance with a Development Agreement dated September 13, 2000 and First Amendment to Development Agreement dated May 28, 2002 (collectively referred to as the "Development Agreements"); and

WHEREAS, Section 32.03.015 of the City's Code of Ordinances provides that the purpose of a Planned Development District is to provide for the development of land as an integral unit for single or mixed use in accordance with a Planned Development Concept Plan, which Concept Plans were previously approved in the Development Agreements and Owner now desires to amend said Concept Plans in accordance with the Amended Concept Plan which is attached hereto as Exhibit "B" (hereinafter "Amended Concept Plan");

WHEREAS, the changes to the development standards proposed by the applicant complies with the Development Agreements and current City ordinances except as modified by the Planned Development Standards attached hereto as Exhibit "C" ("Planned Development Standards");

WHEREAS, an amendment to the development standards are necessitated in part by the acquisition and construction of the Bee Cave Parkway which is adjacent to Owner's Property and out of which Owner has agreed to convey right of way to the City thereby reducing the amount of Property available for development by the Owner;

WHEREAS, the City Council of the City of Bee Cave, in compliance with the laws of the State of Texas, with reference to the granting of zoning classifications and changes, have given the requisite notices by publication and otherwise, and have held two public hearings and afforded a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, and the City Council of the City of Bee

Cave is of the opinion and finds that said zoning change should be granted as set forth herein; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEE CAVE, TEXAS:

SECTION 1. Findings of Fact. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION 2. That the zoning for the herein described Property is hereby amended so as to authorize the amended Development Standards attached hereto as Exhibit "C" for the Property described in Exhibit "A" which exhibits are attached hereto and incorporated herein for all purposes.

SECTION 3. That the Amended Concept Plan for this Planned Development District which is attached hereto as Exhibit "B" and made a part hereof for all purposes is hereby approved for said Planned Development District as required by Chapter 32, of the Code of Ordinances of the City of Bee Cave, Texas. Any proposed use or development depicted on the Amended Concept Plan shall not be deemed authorized or approved by the City of Bee Cave until a final site plan is approved for such use and/or development in accordance with the terms and conditions of Chapter 32 of the Code of Ordinances as amended by this Ordinance.

SECTION 4. That the granting of this amendment to Ordinance 00-11-14C is subject to all applicable development regulations contained in the Code of Ordinances of the City of Bee Cave, except as modified herein and except as previously approved in the Development Agreements referenced herein, as well as the following special conditions:

- A. That any new development of uses authorized herein which were not previously authorized by the herein described Development Agreements shall be constructed in accordance with a detailed site plan, which must be submitted, reviewed and approved as required by Chapter 32 of the Code of Ordinances prior to any such new development taking place on the Property;
- B. That the development on the Property must comply with the Development Agreements and Ordinance 00-11-14C except as modified by this Ordinance.
- C. That the detailed site plan(s) required for any specific development on the Property, and all development shown thereon, must conform to the approved Concept Plans contained in the Development Agreements and all other ordinances of the City, except as same may be modified by the terms of this Ordinance, prior to the issuance of any permit or certificate necessary to proceed with accomplishment of the development indicated on the Amended Concept Plan; and

D. That all of the requirements of the Code of Ordinances of the City including, without limitation, Chapter 32 (the Zoning Ordinance), and Chapter 30 (the Subdivision Ordinance), shall apply to this project and the Property, except for those requirements, which were previously approved in Ordinance 00-11-14C and the Development Agreements, or modified for the project by the Planned Development Standards contained in Exhibit "C" attached hereto.

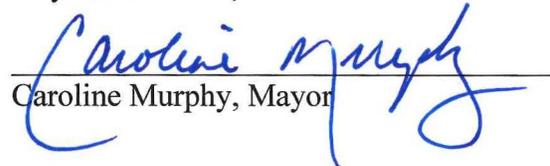
SECTION 5. The City Administrator is hereby authorized and directed to note the zoning change on the official Zoning Map of the City of Bee Cave, Texas.

SECTION 6. That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjusted or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional, and shall not affect the validity of Chapter 14, Zoning, of the City of Bee Cave Code of Ordinances and Map as a whole.

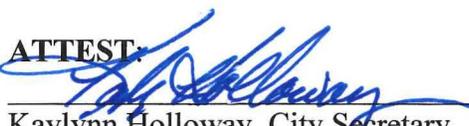
SECTION 7. That this Ordinance shall take effect immediately from and after its passage and publication as required by law.

DULY PASSED by the City Council of the City of Bee Cave, Texas, on the 9th day of December, 2008.

APPROVED:
City of Bee Cave, Texas


Caroline Murphy, Mayor

ATTEST:


Kaylynn Holloway, City Secretary

[SEAL]

APPROVED AS TO FORM:


Patty L. Akers, City Attorney
City of Bee Cave, Texas

EXHIBIT – A
Property Description

EXHIBIT A

Lot 1, Block "B", of the REPLAT OF THE HOME DEPOT ADDITION, a subdivision in Travis County, according to the map or plat thereof, recorded under Document No. 200200218 of the Official Public Records of Travis County, Texas.

EXHIBIT- B
Amended Concept Plan



EXHIBIT-C

AMENDED PLANNED DEVELOPMENT STANDARDS

The following Amended Planned Development Standards shall be applicable to the Property within this Planned Development – Commercial District. To the extent that any of the following standards conflict with other City Ordinances, or Development Agreements previously approved for this Project, the following shall control. All development activity undertaken on the Property which was previously approved by the Development Agreement dated September 13, 2000 and the Development Agreement Amendment dated May 28, 2002, or Ordinance 00-11-14C (the “Project”), shall comply with the development standards contained within the Development Agreements for the Property, except as modified by this Ordinance. All development activity undertaken for new uses on the Property which were not previously approved in the Development Agreements, or Ordinance 00-11-14C shall comply with current City zoning, subdivision and construction codes and requirements, except as modified by this Ordinance. Capitalized terms shall be defined as indicated in these Amended Planned Development Standards, as reflected on the Amended Concept Plan or as defined in the City of Bee Cave Code of Ordinances (“Code”), depending upon context.

1. General Project Amendment Design Requirements

The Property is an approximate 26 acre tract which is a portion of the Project which was previously approved by the City of Bee Cave in the Development Agreements referenced herein and Ordinance 00-11-14C and is the portion of the Project developed by the Target Corporation primarily for a Target Retail Store. The Development standards described in the Development Agreements and Ordinance 00-11-14C are hereby revised for the Property as follows:

- a. Development of a Hotel/Motel Use is authorized for the Property provided that it is constructed in accordance with current City Ordinances. All landscape plans, building elevations and NPS plans for a Hotel/Motel Use shall be approved in conjunction with approval of the requisite site plan for the Hotel/Motel Use.
- b. A two lane connector road connecting Home Depot Boulevard and the proposed Bee Cave Parkway that contains appropriate left/right turn lanes for entry into the parking lot and into Home Depot Boulevard and the Bee Cave Parkway as depicted in Exhibit “B” is authorized for the Property. Such road construction will not count toward the impervious cover limit applicable to the Property and such road may be constructed as a public or private road at the Property Owner’s discretion. One median cut within Bee Cave Parkway that lines up with the median cut to be authorized for the property on the south side of the Bee Cave Parkway shall be authorized as depicted on the Amended Concept Plan.
- c. The parking lot, as proposed for expansion and the water quality area depicted in Exhibit “B”, shall not be subject to the 75-foot setback along the Bee Cave Parkway. A 50 foot setback shall be applicable to the portion of the Property

adjacent to the expanded parking area and no set back shall be applicable to the portion of the Property where the water quality area is located. Provided however, that no vertical structures shall be authorized within these set back areas.

- d. The Property Owner is authorized to construct an expansion to the existing Target Store as authorized in the Amended Development Agreement which expansion shall not be subject to any time limit or expiration date for construction.
- e. The acquisition and construction of the proposed Bee Cave Parkway shall not count against the Property Owner's impervious cover limit.
- f. The City acknowledges and approves of the assignment of impervious cover to the Property as described in Exhibit "D" attached hereto. The amount of impervious cover that the Property is allowed to construct above the portion of impervious cover already constructed and including the assigned amount of impervious cover is 351,703 square feet.
- g. The Property shall not be responsible for the capture and treatment of any overland flow across the Property resulting from Bee Cave Parkway.
- h. Signage shall be authorized as described in Exhibit "E" attached hereto. Any other signage within the Property, or amendments to signage applicable to the Property, shall be made in accordance with the City's Sign Ordinance as it may be amended from time to time. Such changes or amendments to signage shall not require an amendment to this Ordinance.
- i. Utilities required for service to the Property and located along Bee Cave Parkway shall be buried.
- j. In the event that the location of streets, driveways, parking, utilities, or water quality ponds or structures are subsequently approved by the City Council in association with plat approval or site plan approval, such changes shall be authorized herein without the need for an amendment to the Amended Concept Plan or this zoning ordinance.

EXHIBIT -D
Assignment of Impervious Cover

**SUPPLEMENTAL ASSIGNMENT OF RIGHTS UNDER DEVELOPMENT
AGREEMENT AND AGREEMENT REGARDING DEVELOPMENT**

STATE OF TEXAS

COUNTY OF TRAVIS

This Supplemental Assignment of Rights Under Development Agreement and Agreement Regarding Development (this "Agreement") is made by ERA BC Partners, Ltd., a Texas limited partnership ("ERA") and Target Corporation, a Minnesota corporation ("Target").

I. INTRODUCTION

1.01. Home Depot U.S.A., Inc., a Delaware corporation ("Home Depot"), ERA, and Target previously entered into that certain Assignment of Rights Under Development Agreement and Agreement Regarding Development dated August 23, 2002 (the "Original Assignment") with respect to an approximately 106.558-acre tract of land located in the Village of Bee Cave (the "Village"), Travis County, Texas, as more particularly described in the Original Assignment (the "Original Tract").

1.02. The Original Tract is the subject of a Development Agreement with the Village dated September 13, 2000, as amended by a First Amendment to Development Agreement approved May 28, 2002 (collectively, the "Village Agreement").

1.03. Home Depot has developed a Home Depot store, with associated parking, drives, water quality pond, and other improvements, on approximately 39.144 acres of the Original Tract described in the Original Assignment (the "Home Depot Parcel").

1.04. Contemporaneously with the execution and delivery of the Original Assignment, Home Depot sold (i) to ERA a portion of the Original Tract containing approximately 11.823 acres and described in the Original Assignment (the "Developer Parcel") and (ii) to Target the balance of the Original Tract containing approximately 50.513 acres and described in the Original Assignment (the "Target Parcel").

1.05 As set out in the Village Agreement, the Original Tract was granted certain entitlements, and is subject to certain development restrictions, which entitlements and restrictions vary depending on whether or not Home Depot chose the development options set out in the Original Agreement ("Alternative I") or the alternative development option described in the First Amendment ("Alternative II"). Alternative II was chosen.

1.06 ERA developed a portion of the Developer Parcel and sold a portion of the Developer Parcel. As part of such development and sale, 124,581 square feet of Impervious Cover (as defined in the Village Agreement) was constructed, leaving 256,350 square feet of Impervious Cover remaining for future development.

1.07 ERA desires to retain 82,110 square feet of the remaining Impervious Cover for future development on the Developer Parcel, leaving 174,240 square feet of Impervious Cover in excess. The excess 174,240 square feet of Impervious Cover is hereafter referred to as the "Excess Impervious Cover".

1.08 For good and valuable consideration, ERA desires to transfer ERA's right, title and interest, if any, in the Excess Impervious Cover to Target, and this Agreement is entered into to memorialize such transfer.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, ERA and Target agree as follows:

II. VILLAGE AGREEMENT; ASSIGNMENT

2.01 Capitalized Terms. Capitalized terms that are not otherwise defined herein have the meaning ascribed to them in the Village Agreement.

2.02 Assignment. Subject to all of the terms of this Agreement, ERA hereby quit claims and assigns to Target ERA's right, title and interest, if any, in the Excess Impervious Cover. Target accepts such quit claim and assignment.

III. ALLOCATION OF RIGHTS AND RESTRICTIONS

3.01 Impervious Cover. Section 3.06 of the Village Agreement allows a maximum of 1,500,000 square feet of Impervious Cover on the entire Original Tract. After the assignment provided in this Agreement, it is the intent of the parties that the Impervious Cover be allocated as follows: development on the Home Depot Parcel may include up to 523,591 square feet of Impervious Cover, development on the Developer Parcel may include up to 206,704 square feet of Impervious Cover, and development on the Target Parcel may include up to 769,705 square feet of Impervious Cover.

IV. MISCELLANEOUS

4.01 Rights of Successors. The rights and restrictions described in this Agreement run with the land, and shall bind and inure to the benefit of the parties and their respective successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

4.02 No Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the parties hereto and their respective successors and assigns, and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person. However, the Acknowledgement of the Village of Bee Cave attached to this Agreement is incorporated into this Agreement.

4.03 Severability. If any provision of this Agreement shall be or become invalid, illegal or unenforceable in any respect under the any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

4.04 Modification, Amendment, and Termination. Neither this Agreement nor the Original Agreement may be modified, amended, or terminated except in writing, signed by all of the then owner(s) of the Original Tract, provided that ERA shall be the only owner of the Developer Parcel required to sign any such modification, amendment or termination, so long as it owns any part of the Developer Parcel.

4.05 Counterparts. This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and all of which are identical.

[SIGNATURE PAGES AND ACKNOWLEDGEMENT BY VILLAGE FOLLOW]

[SEPARATE SIGNATURE PAGE FOR ERA BC PARTNERS, LTD.]

ERA BC PARTNERS, LTD., a Texas
limited partnership

By: David Berndt Interests, Inc.,
a Texas corporation, general partner

By: [Signature]
David P. Berndt, President

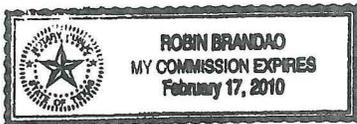
Date: 10.20.08

STATE OF TEXAS

COUNTY OF DALLAS

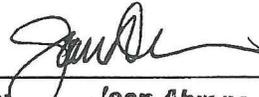
This instrument was acknowledged before me the 20th day of October, 2008, by David P. Berndt, David Berndt Interests, Inc., a Texas corporation and general partner of ERA BC Partners, Ltd., a Texas limited partnership, on behalf of said corporation and limited partnership.

[Signature]
Notary Public, State of Texas



[SEPARATE SIGNATURE PAGE FOR TARGET CORPORATION]

TARGET CORPORATION,
a Minnesota corporation

By: 
Name: Joan Ahrens
Title: Director Real Estate
Target Corporation
Date: 10-23-08

STATE OF MINNESOTA

COUNTY OF HENNEPIN

This instrument was acknowledged before me the 23 day of October, 2008, by Joan Ahrens, Director of Target Corporation, a Minnesota corporation, on behalf of said corporation.

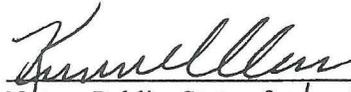
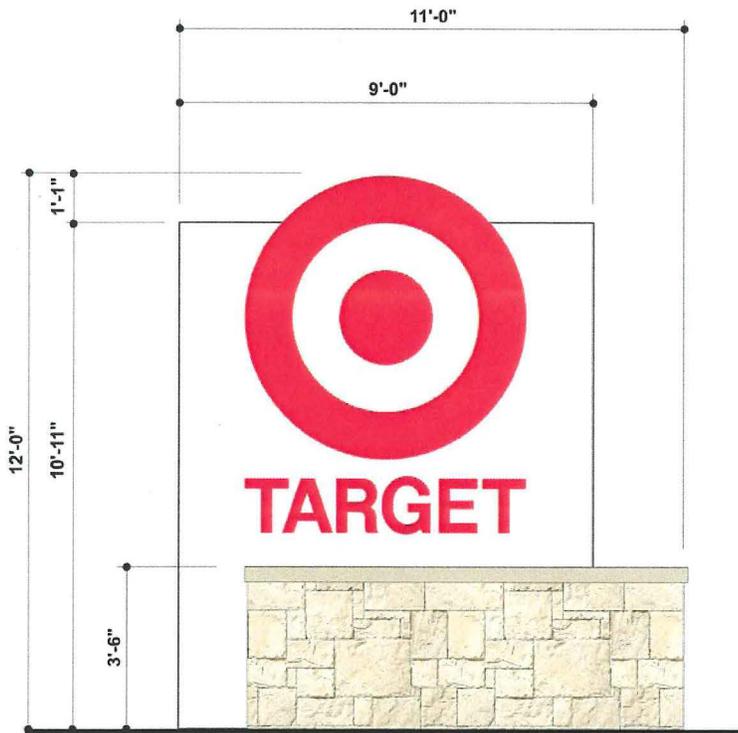
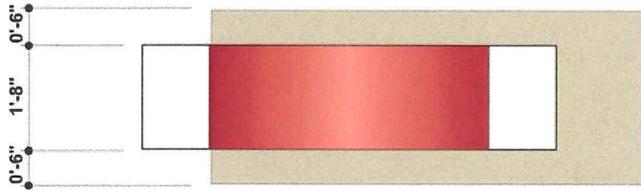

Notary Public, State of 1/31/12



EXHIBIT -E
Signage

EXHIBIT E



SIDE & TOP ELEVATION

SIGN SPECIFICATIONS

SIGN AREA :
108 sq. ft. TOTAL
12 ft. OVERALL HEIGHT

CONSTRUCTION :
CABINET IS CONVENTIONAL CONSTRUCTION. ANGLE IRON FRAME WITH ALUMINUM CLADDING. BASE TO BE MASONRY.

SIGN FACE IS ROUTED ALUMINUM BACKED WITH CLEAR LEXAN. 3M SCOTCHCAL FILM AND DIFFUSER FILM IS APPLIED TO 2ND SURFACE OF PLEX. NOTE: BULLSEYE CENTER DOT AND OUTER RING ARE ALWAYS TWO (2) SEPARATE PIECES

COLORS :
CABINET : WHITE
FACE BKGD : WHITE
BULLSEYE : CARDINAL RED #3630-53
SUPER AND TARGET: CARDINAL RED #3630-53
BASE: OLDCASTLE PRAIRIE STONE IN ASHLAR PATTERN IN BUFF COLOR W/ ROCKFACE FINISH. 4" CAST STONE CAP TO MATCH.

ILLUMINATION :
ILLUMINATION FROM EXTERIOR GROUND LIGHT. NO INTERNAL ILLUMINATION.

ELECTRICAL :
NONE

PROPOSED TARGET SITE SIGN
BEE CAVES, TX
12.5.08