

**STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LEGAL AFFAIRS**

IN THE MATTER OF:

Home Depot USA, Inc.

ATTORNEY GENERAL CASE NOS. L06-3-1100
L10-3-1170

**AMENDMENT TO AGREEMENT
AND ASSURANCE OF VOLUNTARY COMPLIANCE**

PURSUANT to the provisions of Chapter 501, Part II, Florida Statutes, Florida's Deceptive and Unfair Trade Practices Act, in 2006 the Office of the Attorney General caused an inquiry to be made into potentially confusing advertising and marketing of special order aluminum storm panels. That inquiry resulted in Home Depot USA, Inc. ("Home Depot") entering into an Agreement and Assurance of Voluntary Compliance on June 25, 2007 ("Assurance"), attached hereto as Exhibit "A". The Office of the Attorney General and Home Depot agreed in the Assurance, and continue to agree, that consumers should continue to be able to rely on representations made to them in any advertising and marketing of products by Home Depot. This Amendment to Agreement and Assurance of Voluntary Compliance ("Amendment") is made for the purpose of addressing certain additional circumstances that have arisen since the entry of the Assurance as it pertains to Home Depot's advertising of the product "Astroguard," a purportedly high-strength, high-tenacity nylon hybrid fabric. Accordingly, the Amendment is made to provide for those certain additional contingencies and assisting the Office of the Attorney General and the consumers of Florida without any admission or contention that Home Depot has

violated the law, and without prejudice to Home Depot's position in any pending or future litigation with third parties. This Amendment is entered into pursuant to the authority vested in the Office of the Attorney General under Section 501.207(6), Florida Statutes.

The Assurance is therefore hereby amended as follows:

1. Paragraph 3.3 is amended to read "Home Depot will not advertise or represent that the products it offers for sale are approved by the BCCO, are "Miami-Dade compliant," have received a Notice of Acceptance ("NOA") number, or received such similar designation unless that is true."
2. Section 5. MISCELLANEOUS PROVISIONS is amended to add Paragraph 5.12 below:

"5.12 If the OAG believes that a material breach of this Assurance has occurred, the OAG shall provide written notice to Home Depot of the breach and an opportunity promptly to cure such breach. The notice shall describe in detail the material breach that the OAG believes has occurred. Home Depot shall have fourteen (14) days from the receipt of the notice within which to provide a good faith written response to the OAG's notice. The response shall include, at a minimum, either:

- a. a statement explaining why Home Depot believes it is in full compliance with the Assurance; or
- b. an explanation of how the alleged material breach occurred; and
- c. a statement that the alleged breach has been cured, and explaining how; or
- d. a statement that the alleged breach cannot be reasonably cured within twenty (20) days from receipt of the notice, but (1) Home Depot has begun to take corrective

action to cure the alleged breach; (2) Home Depot is pursuing such corrective action with reasonable due diligence; and (3) Home Depot has provided the OAG with a detailed and reasonable timetable for curing the alleged breach;


provided, however, that this provision shall not prevent the OAG from pursuing its statutory obligation to conduct investigations or bring enforcement actions necessary to protect the public interest.

3. Home Depot agrees to pay to the State of Florida, Office of the Attorney General, attorney's fees and costs of investigation and enforcement in the sum of Fifteen Thousand and 00/100 Dollars (\$15,000.00) paid within ten days of the execution of this Amendment. This sum shall be deposited in the Department of Legal Affairs' Revolving Trust Fund, in accordance with Section 501.2101(1), Florida Statutes. Payment to the Department of Legal Affairs shall be made by certified check payable to the Department of Legal Affairs' Revolving Trust Fund, and shall be delivered to Gerald Johnson, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050 or by wire transfer.

4. All other terms and provisions of the Assurance attached as Exhibit "A" shall remain in full force and effect.

[SIGNATURES BEGIN ON NEXT PAGE]

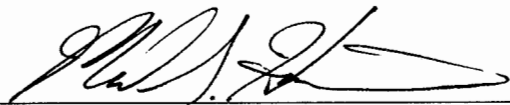
HOME DEPOT USA, INC.

(C.R.) 
By: Jocelyn J. Hunter
Title: Vice President and Deputy General Counsel

Dated: 4/15/13

FOR THE OFFICE OF THE ATTORNEY GENERAL

ACCEPTED this 3rd day of June 2013.


MARK S. HAMILTON
ASSISTANT ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION
DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
The Capitol, PL-01
Tallahassee, Florida 32399-1050
850-414-3600

STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL

IN THE MATTER OF:
Home Depot USA, Inc.

ATTORNEY GENERAL CASE NO. L06-3-1100

AGREEMENT AND ASSURANCE OF VOLUNTARY COMPLIANCE

THIS AGREEMENT AND ASSURANCE OF VOLUNTARY COMPLIANCE (the "Agreement") is entered into on this 22 day of June, 2007, between the Department of Legal Affairs, Office of the Attorney General, (hereinafter "OAG") and Home Depot USA, Inc., including each of its parents, subsidiaries, and affiliates, and their officers, directors, employees, and agents, (hereinafter collectively referred to as "Home Depot").

WITNESSETH:

WHEREAS, the OAG caused an investigation to be made into sales practices concerning aluminum storm panels;

WHEREAS, Home Depot and the OAG desire to conclude the investigation and reach an agreement that would fully and finally resolve and terminate the investigation, without any admission that Home Depot has violated the law;

NOW THEREFORE, in consideration of the premises and the mutual promises, agreements, covenants, and obligations contained herein, and for other good and valuable consideration as stated herein, the receipt of which are hereby

EXHIBIT

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acknowledged, the OAG and Home Depot hereby enter into this Agreement under the terms set forth below.

1. DEFINITIONS

1.1 For the purposes of this Agreement, the following definitions shall apply:

- A. The term "Investigation" shall mean the OAG's investigative case, number L06-3-1100, which was opened and assigned for investigation on June 27, 2006. The investigation concerned Home Depot's marketing and sale of aluminum storm panels between the time period of January 1, 2006 through the date of this Agreement.
- B. The term "Parties" as used in this Agreement shall collectively refer to Home Depot and the OAG.
- C. The term "BCCO" shall mean the Building Code Compliance Office of Miami-Dade County.

2. SCOPE OF INVESTIGATION

2.1 Home Depot is a Delaware corporation, with its principal place of business at 2455 Paces Ferry Road, Atlanta, Georgia, 30339. Through subsidiary corporations, Home Depot owns and operates a chain of home improvement stores in Florida as well as other States and countries. Home Depot is qualified with the Florida Secretary of State to conduct business as a foreign corporation in Florida.

Home Depot is solvent and has good and sufficient funds to fully meet all financial obligations called for in this Agreement.

2.2 In its retail stores in Florida, Home Depot sells aluminum storm panels for self and professional installation, including sales by and through its home installation affiliate THD At-Home Services, Inc. All aluminum storm panels sold by Home Depot in the State of Florida during the subject time period met all requirements of the Florida Building Code. In addition to meeting those requirements, for the time period identified, all aluminum storm panels sold from the shelves or installed by Home Depot Stores in Miami Dade County met the further requirements of the BCCO. Aluminum Storm shutters sold from the shelves of all Home Depot Stores in Florida met the requirements of the BCCO. During the period January 2006 through early March 2007, one of Home Depot's special order vendors delivered aluminum storm shutters to Home Depot and its consumers that met Florida Building Code, but not the additional requirements of the BCCO. As a result of this change in product from one of Home Depot's vendors, the OAG asserts that a number of consumers received product that met the Florida Building Code when those consumers thought they were purchasing BCCO approved product.

2.3 In approximately June, 2006, a consumer complained to the OAG that he had been led to believe that the aluminum storm panels that he special-ordered at a Home Depot store in Flagler County, Florida were BCCO approved, when in fact

they were not. Home Depot has addressed that consumer's complaint and provided full restitution in a manner that the OAG considers satisfactory.

2.4 There is no allegation that the aluminum storm panels sold by Home Depot during the Relevant Time Period are defective in any way, or that they fail to comply with the Florida Building Code, which generally establishes the standards for such storm panels throughout Florida except for Miami-Dade County and portions of Broward County. However, the OAG asserts that a number of consumers who purchased aluminum storm panels at Home Depot believed, based on information produced by Home Depot, they were purchasing BCCO approved panels when in fact the panels they received were not BCCO approved.

2.5 The OAG acknowledges that at all times during the investigation Home Depot has acted in good faith and cooperated with the OAG. Home Depot does not admit that it has violated any law or misled consumers, and the OAG and Home Depot agree that this Agreement shall not constitute evidence or admission regarding the existence or non-existence of any issue, fact or violation of any law.

3. APPLICATION AND COMPLIANCE

3.1 This Agreement applies to and binds Home Depot, acting directly, or through any individual, employee, officer, affiliate corporation, subsidiary, agent, franchisee, store, location, division, successor or assign or other device, and any representatives engaged in the projects or activities of Home Depot in or affecting

Florida. This Agreement shall be binding upon and inure to the benefits of the Parties, and their respective successors and assigns.

3.2 Home Depot will comply with the provisions of Section 501.203(3), Florida Statutes.

3.3 Home Depot will not advertise or represent that the products it offers for sale are approved by the BCCO unless that is true.

4. CONSUMER RESTITUTION

4.1 This agreement is intended to provide reimbursement or replacement products to certain Home Depot consumers who purchased non-BCCO approved special order panels from Home Depot Stores in Florida during the period January 1, 2006 through the date of this Agreement (the "Relevant Time Period").

4.2 For qualifying Miami-Dade and Broward Consumers who thought they were purchasing BCCO approved storm panels during the Relevant Time Period, but in fact received Florida Building Code approved product instead, Home Depot will offer to provide replacement aluminum storm panels that are BCCO approved. The offer to replace panels shall be for the same lineal footage of storm panels as originally purchased by the consumers, though Home Depot may not be able to provide replacement panels that are the same color or design as the original panels. However, Home Depot shall make all reasonable efforts to accommodate the consumer's original purchase. By not later than July 1, 2007, the OAG shall have sent out by U.S. Mail a letter (a copy of which is attached) to each listed Miami-

Dade and Broward Consumer explaining this settlement, along with a copy of a Release Form, a copy of which is attached. Each consumer must return the executed Release Form to Home Depot such that it is either postmarked or received by Home Depot by not later than October 1, 2007 in order to participate under this Agreement. In the event that neither the OAG nor Home Depot is able to contact a qualifying Miami-Dade or Broward Consumer by October 1, 2007, or the consumer does not return an executed Release Form such that it is postmarked received by Home Depot by that date, Home Depot shall not be required to provide any relief to such consumer. Home Depot shall have contacted or attempted to contact all qualifying and responsive Miami-Dade and Broward Consumers to schedule delivery of replacement storm panels by not later than 30 days after such consumers have provided their required documentation to Home Depot.

4.3 For qualifying consumers located in counties other than Miami-Dade or Broward who thought they were purchasing BCCO approved storm panels during the Relevant Time Period, but in fact received Florida Building Code approved product instead, Home Depot will offer to give the consumer a partial refund in the amount of 25% of the amount of the purchase price of the aluminum storm panels only (not including related hardware or installation) paid by the consumer. By not later than July 1, 2007, the OAG shall have sent out by U.S. Mail a letter (a copy of which is attached) to each listed consumer explaining this settlement, along with a copy of the attached Release Form. In order to receive relief under this Agreement, such qualifying consumers must return their original executed Release Form to

Home Depot such that it is either postmarked or received by not later than October 1, 2007. In the event that neither the OAG nor Home Depot is able to contact a qualifying Florida consumer by October 1, 2007, or the consumer does not return an executed Release Form such that it is postmarked or received by Home Depot by that date, Home Depot shall not be required to provide any relief to such consumer. Home Depot shall mail out all customer refunds provided for under this section 4.3 to qualifying and responsive Florida consumers by not later than November 1, 2007.

4.4 Within five (5) calendar days after the execution of this Agreement the OAG will provide to Home Depot a list of consumers from counties other than Miami-Dade or Broward who purchased 0.050 aluminum storm panels from Home Depot during the relevant time period and to whom the OAG sent letters inquiring about their storm panel purchases. This list shall include each consumer's name, address, and any information the OAG may have about the consumer's purchase of storm panels from Home Depot. Consumers who are on this list provided by the OAG may also qualify to receive a partial refund in the amount of 25% of the amount of the purchase price of the aluminum storm panels only (not including related hardware or installation) paid by the consumer. In order to do so, such consumers must provide the following materials to either the OAG or Home Depot such that it is either postmarked or received by not later than October 1, 2007: (a) documentation sufficient to show that the consumer purchased Cameron Ashley 0.050 aluminum storm panels during the relevant time period with sufficient information to show the amount paid for the storm panels; and (b) an original

executed Release Form. Home Depot shall not be required under this Agreement to provide any partial refund or other relief to consumers who fail to provide all the required materials to either the OAG or Home Depot such that it is either postmarked or received by October 1, 2007. Home Depot shall mail out all customer refunds provided for under this section 4.4 to qualifying and responsive Florida consumers within 30 days of receipt of the claim form.

4.5 Home Depot shall not include any advertising with the Home Depot check or cash to the consumer, and otherwise shall in no way advertise or attempt to advertise through the reimbursement or any accompanying materials.

4.6. By no later than December 1, 2007, Home Depot will provide an accounting affidavit to the OAG. Home Depot shall send the accounting affidavit to Michael Palecki, Tallahassee Bureau Chief, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050. The accounting affidavit shall include:

- A. A statement indicating the position and title of the affiant;
- B. A statement that the affiant is executing the affidavit on behalf of Home Depot pursuant to this Agreement;
- C. A statement that Home Depot has performed and successfully met all obligations set forth in paragraphs 4.1-4.5 of this Agreement;

- D. A list of all Miami-Dade and Broward Consumers who have provided the required documentation to qualify for relief under this Agreement, and a statement of the dollar value of replacement storm panels and refunds provided;
- E. A list of all other Florida consumers who have provided the required documentation to qualify for relief under this Agreement, and a statement of the dollar amount of refunds paid to such consumers, and the date(s) on which the payments were mailed or otherwise provided;
- F. A list of consumers who have submitted documentation, but who have failed to qualify for relief under this Agreement, and for each consumer a statement as to why Home Depot asserts the consumer does not qualify for relief; and
- G. A list of consumers for whom Home Depot has attempted to provide relief under this Agreement, but: (i) the consumers have failed to claim their replacement panels; (ii) the mailed notices or checks have been returned by the U.S. Postal Service for improper address or as undeliverable; or (c) performance is otherwise impossible. This list shall include a brief explanation for failure or inability to perform for each listed consumer.

The information required under subparts D through G, above, must be provided to the OAG on a CD-ROM as a file in Microsoft Excel or other similar spreadsheet format.

4.7 By not later than January 15, 2008, Home Depot and the OAG shall confer regarding the consumers listed pursuant to section 4.6 G, above, and where the OAG determines that Home Depot has made a good faith effort to comply with its obligations under this Agreement, Home Depot shall be relieved of further obligations under this Agreement with respect to such consumers.

5. MISCELLANEOUS PROVISIONS

5.1 The Parties agree that venue for any and all matters or disputes arising out of this Agreement shall lie solely in Leon County, Florida.

5.2 Home Depot shall not effect any change in its form of doing business or its organizational identity as a method of avoiding the terms and conditions set forth in this Agreement.

5.3 This Agreement shall become effective upon its signature by the Deputy Attorney General. Upon execution of this Agreement by the Deputy Attorney General and payment of the sums specified in paragraph 5.11, the OAG shall terminate its investigation of Home Depot, and the OAG shall be estopped from investigating Home Depot or any of its affiliates further or taking any other further

action against Home Depot or any of its affiliates, with regard to the facts and time periods at issue in this investigation.

5.4 This Agreement constitutes the entire agreement between the Parties with regard to resolving and terminating the investigation, and all prior negotiations and understandings between the Parties shall be deemed merged into this Agreement. Consumers who elect to obtain relief under this Agreement are required to sign a release of claims against Home Depot, as set forth in the sample attached hereto as Exhibit A. Otherwise, nothing in this Agreement affects the private rights of action by consumers; however, nothing in this Agreement creates a private right of action.

5.5 No representations, warranties, or inducements have been made to the Parties concerning this Agreement other than those representations, warranties, and covenants contained in this Agreement.

5.6 No waiver, modification or amendment of the terms of this Agreement shall be valid or binding unless made in writing, signed by the Party to be charged and then only to the extent set forth in such written waiver, modification, or amendment.

5.7 Any failure by any Party to the Agreement to insist on strict performance by any other Party of any provision of the Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such

failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

5.8 This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida, including, but not limited to, its conflict of law principles.

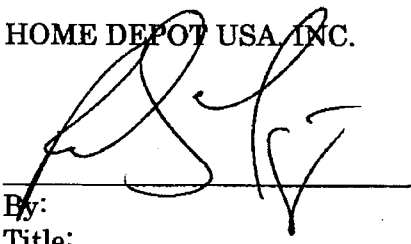
5.9 If any clause, provision, or section of the Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

5.10 Home Depot enters this Agreement without any admission of liability or violation of law. Home Depot has caused this Agreement to be executed by an authorized representative, as a true act and deed, as of the date affixed next to his signature. Said representative and Home Depot affirm and warrant that he is acting in his capacity and within his authority as corporate officer of Home Depot, and that by his signature said representative is binding said entity to the terms and conditions of this Agreement.

5.11 Home Depot has agreed to pay the sum of \$75,000.00 to cover the investigative costs incurred by the OAG in connection with this matter. The OAG and Home Depot agree that such payment shall not be deemed any admission or

evidence of any wrongdoing on the part of Home Depot or any of its officers,
directors, employees, agents, contractors, parents, subsidiaries or affiliates.

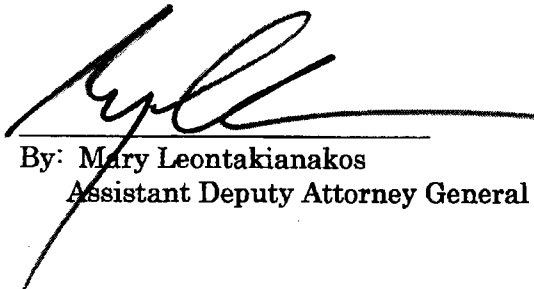
HOME DEPOT USA, INC.


By: _____
Title:

RWF

Dated: 6/22/07

OFFICE OF THE ATTORNEY GENERAL


By: Mary Leontakianakos
Assistant Deputy Attorney General

Dated: 6/25/07