



MISC 2010004993



JAN 19 2010 10:42 P 6

Fee amount: 35.50
FB: see attached
COMP: SB

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
01/19/2010 10:42:43.00



2010004993

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

168th AND DODGE, L.P.
c/o RED Development
6263 N. Scottsdale Road, Suite 330
Scottsdale, AZ 85250
Attention: Director of Development, Legal

AMENDED AND RESTATED AGREEMENT AS TO THE SCHEELS EXCLUSIVE

This Amended and Restated Agreement as to the Scheels Exclusive (the "Agreement") is made as of the 29th day of October, 2009, by 168th AND DODGE, L.P., a Nebraska limited partnership, (hereafter, the "**Developer**"), having a mailing address of c/o RED Development, 6263 N. Scottsdale Road, Suite #330, Scottsdale, AZ 85250 and SCHEELS ALL SPORTS, INC., a North Dakota corporation ("**Scheels**"), having a mailing address of 3202 13th Avenue South, Fargo, ND 58103.

WITNESSETH:

WHEREAS, Developer is the owner in fee of that certain real property located in the County of Douglas, State of Nebraska, more particularly described in Exhibit A (the "**Developer Property**").

WHEREAS, Scheels is the owner in fee of that certain real property located in the County of Douglas, State of Nebraska, more particularly described in Exhibit B (the "**Scheels Property**").

- 41 -

Courtely

WHEREAS, Developer and Scheels previously entered into a Declaration of Reciprocal Easements, Covenants and Restrictions dated June 23, 2003 and recorded on July 2, 2003 as Document No. 2003128568 as amended by that certain First Amendment of Declaration of Reciprocal Easements, Covenants and Restrictions dated May 10, 2004 and recorded on May 14, 2004 as Document No. 2004062134 (the "**ECR**").

WHEREAS, The ECR contains an exclusive for the benefit of Scheels as to the Developer Property and the Scheels Property;

WHEREAS, Developer has entered into or intends to enter into lease agreements with The Gap, Inc., Old Navy, LLC and Banana Republic, LLC for certain premises in the Developer Property.

WHEREAS, Developer and Scheels previously entered into that certain Agreement as to the Scheels Exclusive, dated March 4, 2005, and recorded on March 17, 2005 as Document No. 2005029491 ("**Original Agreement**"), with respect to the Scheels exclusive.

WHEREAS, Developer and Scheels desire to amend, restate and supersede the Original Agreement in its entirety, and to enter into this Agreement as set forth hereinbelow.

NOW, THEREFORE, the parties declare:

1. The Original Agreement is hereby amended, restated and superseded in its entirety by this Agreement, and is of no further force and effect.

2. That certain portion of the Scheels exclusive contained in the ECR which restricts any User in the Shopping Center (as defined in the ECR) from using in excess of 10% of the gross leasable area of its space (including adjacent aisle space) for the sale or display of branded athletic specific apparel shall not apply to the branded athletic specific apparel of The Gap, Inc., Old Navy, LLC or Banana Republic, LLC (collectively, "Gap") or any affiliate, successor or assign of Gap.

IN WITNESS WHEREOF, the undersigned has executed this Agreement the day and year first written above.

DEVELOPER:

168th AND DODGE, L.P., a Nebraska limited partnership


By: RED VILLAGE POINTE, LLC, a Missouri limited liability company, its Manager

By: E&R Holdings, LLC, an Arizona limited liability company, Managing Member

By: 
Michael L. Ebert, Manager

SCHEELS

SCHEELS ALL SPORTS, INC., a North Dakota corporation

By: 
Name: B.D. Sundt
Title: CEO

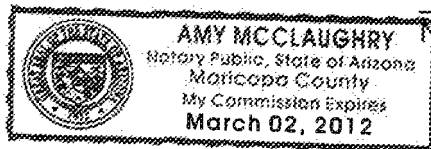
Exhibits:

Exhibit A Legal Description of the Developer Property
Exhibit B Legal Description of the Scheels Property

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On October 29th, 2009, before me, Amy McLaughry, a Notary Public in and for said state, personally appeared Michael L. Ebert, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Amy McLaughry
Notary Public in and for said State

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On October 14th, 2009, before me, Rebecca L Adams, a Notary Public in and for said state, personally appeared Steve D. Scheel, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Rebecca L Adams
Notary Public in and for said State

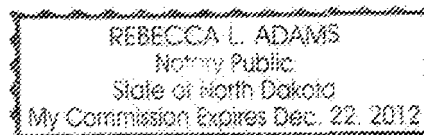


Exhibit A
Legal Description of the Developer Property

Lots 2, 4 and 5, inclusive, and Lot 8, Outlot A and Outlot B,
Village Pointe, a subdivision in Douglas County, Nebraska. (68-40328)

AND

(formerly Lot 10, Village Pointe)
Lots 1 through 3, inclusive, Replat One Village Pointe, a
subdivision in Douglas County, Nebraska. (68-40329)

AND

Lot 3 Replat Two Village Pointe, a
subdivision in Douglas County, Nebraska. (68-40344)

Exhibit B

Legal Description of the Scheels Property

Lot 3, Village Pointe, a subdivision in Douglas County, Nebraska

(68-40328)