

1341 542 MISC



MBM61 00 542-549

2 3

Nebr Doc Stamp Tax

Date

By

MICHARON JAKES SERVICE AS COUNTY. NE

OO JUN 16 AM 8:58

Memorandum	of Development	Agreement

RECORDING REQUESTED BY, AND WHEN RECORDED RETURN TO:

Home Depot, U.S.A., Inc.
Legal Department
2455 Paces Ferry Road, N.W.
Atlanta, Georgia 30339-9998

RE:

(Space Above for Recorder's Use)

MEMORANDUM OF DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DEVELOPMENT AGREEMENT is dated _______, 2000 ______, by and between BENSON PARK PLAZA, L.L.C., a Nebraska limited liability company ("Developer"), and HOME DEPOT U.S.A., INC., a Delaware corporation ("HD").

- 1. <u>HD Parcel.</u> HD is the owner of certain real property consisting of approximately 12 acres located at the intersection of 72nd and Ames Street, in Omaha, Nebraska more particularly described on <u>Exhibit "A"</u> annexed hereto and made a part hereof by this reference ("HD's Parcel"), upon which HD may construct certain building improvements (the "HD Store").
- 2. <u>Developer Parcel.</u> Developer remains the owner of certain adjoining land more particularly described on <u>Exhibit</u> "B" annexed hereto and made a part hereof by this reference ("Developer's Parcel").
- 3. Site Work. HD and Developer have provided for the development of HD's Parcel and Developer's Parcel (each a "Parcel" and collectively the "Center") for shopping center and related uses with common roadways and parking areas pursuant to the terms of that certain Development Agreement of even date herewith, between Developer and HD (the "Development Agreement"), and pursuant thereto, Developer is required to perform certain site work and other work (collectively referred to as the "Site Work") both within and outside of the Center, all as is more particularly described in the Development Agreement. All of the terms, provisions and conditions of the Development Agreement are specifically made a part hereof as fully and completely as if set out in full herein.
- 4. <u>Easements Granted to HD.</u> Pursuant to the Development Agreement, Developer has granted HD certain easements over the Developer's Parcel, including construction easements and rights of ingress and egress, all of which rights are more particularly described in the Development Agreement.

Document11

Actual)

- 5. <u>Self Help.</u> Reference is particularly made to <u>Sections 8 and 10(b)</u> of the Development Agreement wherein if Developer defaults in performing the Site Work, HD may, in addition to exercising such other rights and remedies as are provided therein and as are provided at law or in equity, perform the Site Work to cure Developer's default.
- 6. <u>Lien Rights.</u> Reference is particularly made to <u>Section 10(b)</u> of the Development Agreement, wherein each party grants to the other a lien against its property, which lien becomes effective upon default by the granting party in payment of sums due under the Development Agreement and the recording of a claim of lien by the non-defaulting party, as provided as provided in said <u>Section 10(b)</u>. It is understood that the lien so granted shall apply only to the property within the Center owned by the defaulting party at the time of the recording of the claim of lien.
- 7. Purpose of Memorandum of Development Agreement. This Memorandum of Development Agreement is prepared for recording and to give public notice of the obligations of the owner of Developer's Parcel and HD's rights pursuant to the Development Agreement, and in no way modifies the express and particular provisions of the Development Agreement.
- 8. Successors and Assigns. It is the intention of Developer and HD that the rights granted to HD pursuant to the Development Agreement shall inure to the benefit of HD and its successors and assigns, and that any lien and/or security interest placed on Developer's Parcel pursuant to the Development Agreement shall be binding upon and shall burden Developer's Parcel.

1 2

1 2

1 2 3 4 5	IN WITNESS WHEREOF this Memorandum of Development Agreement has been executed by and through the duly authorized officers of Developer and HD, and the seals of said parties have been affixed hereto, as of the day and year first above written.
6	DEVELOPER:
7	BENSON PARK PLAZA, L.L.C.,
8	a Nebraska limited liability company
9	
0	By: Northwood Properties, Inc.,
1	a Nebraska corporation, Manager
2	
3	Λ
4	By: To headon M Soldi
5	Theodore M. Seldin, President
5	
7	· ·
\$	HD:
} `	
<i>)</i>	HOME DEPOT U.S.A., INC.,
	a Delaware corporation
:	D.,,
,	By:
•	Its:
	Printed Name:

1	IN WITNESS WHEREOF this Memorandum of Development Agreement has been executed by and
2	through the duly authorized officers of Developer and HD, and the seals of said parties have been affixed
3`	hereto, as of the day and year first above written.
4	,
5	
6	DEVELOPER:
7	BENSON PARK PLAZA, L.L.C.
8	a Nebraska limited liability company
9	·
0	By:
1	ITS:
2	Printed Name:
3	
4	Attest:
5	IIS:
6	Printed Name:
7	
8	HD:
9	
0	HOME DEPOT U.S.A., INC.,
1	a Delaware corporation /
2	An Flori
3	By: Kally Col
4	Its: KATHRYN E. LEE
5	Printed NaMR: REAL ESTATE LAW GROUP
	JUN 1 2 2000

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

DEVELOPER ACKNOWLEDGMENT

Notary Public

STATE OF NEBRASKA)	
)	SS
COUNTY OF DOUGLAS)	

On the day and year last-above written before me, the undersigned, a Notary Public, duly commissioned and qualified for said County, personally came Theodore M. Seldin, President of Northwood Properties, Inc., who is the Manager of Benson Park Plaza, L.L.C., to me known to be the identical person whose name is subscribed to the foregoing Grant of Easements and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said limited liability company.

WITNESS my hand and Notarial Seal on the day and year last above written.

GENERAL NOTARY-State of Nebraska
REVA L. GRIMM
Hy Comm. Exp. 2/0/03

836991_1.DOC

- 4 -

HD ACKNOWLEDGMENT

STATE OF GEORGIA)

STATE OF GEORGIA)

COUNTY OF Obb

On the Abb day of Obb

me to be the person whose

authorized signatory for Ho

which executed the foregoi

purposes and consideration

instrument was signed by the

KATHRYN E. LEE V.P. REAL ESTATE LAW GROUP

On the day of whose name is subscribed to the foregoing instrument and known by me to be an authorized signatory for Home Depot U.S.A., Inc., a Delaware corporation, the corporation described in and which executed the foregoing instrument, and acknowledged to me that: the instrument was executed for the purposes and consideration therein expressed as the act of the corporation, the seal was affixed, and the instrument was signed by the authorized signatory, all by order of the board of directors of said corporation.

Notary Public

3

4 5

6

My Commission Expires: 12/27, 03

"OFFICIAL SEAL"
Glenda M. Wiggins
Notary Public State of Georgia
My Commission Expires 12-27-03

2.	EXHIBIT "A"
<u>3</u> `	HD's Parcel (Legal Description upon execution)
4	
5	Lot 1, in Benson Park Plaza Replat 1, an addition to the City of Omaha, as surveyed, platted and recorded in
6	Douglas County, Nebraska.

EXHIBIT "B"

Developer's Parcel (Legal Description upon execution)

Lots 2, 3, 4, 5, 6, 7, and 8, in Benson Park Plaza Replat 1, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.