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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

~~RECORDING REQUESTED BY, AND~~)
~~WHEN RECORDED RETURN TO:~~)

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Gregg M. Dorman, Esq.)
Seyfarth Shaw LLP)
55 East Monroe Street, Suite 4200)
Chicago, Illinois 60603)

MICHAEL A. BROWN
RECORDER

RE: Hammond, Indiana)

(Space Above for Recorder's Use)

MEMORANDUM OF DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DEVELOPMENT AGREEMENT (this "Memorandum") is made and entered into effect as of the 3 day of June, 2005 by HOME DEPOT U.S.A., INC., a Delaware corporation ("Home Depot") and MIDCO/WHITECO HAMMOND, LLC, an Indiana limited liability company ("Midco").

1. **HD Parcel.** Home Depot is the owner of certain real property consisting of approximately 15.22 acres located in Hammond, Lake County, Indiana, as more particularly described on **Exhibit A** attached hereto (the "HD Parcel"), upon which Home Depot intends to initially construct certain building improvements (the "HD Store").

2. **Midco Parcel.** Midco is the owner of certain adjacent real property consisting of approximately 3.04 acres located in Hammond, Lake County, Indiana, as more particularly described on **Exhibit B** attached hereto (the "Midco Parcel"), upon which Midco intends to initially construct certain building improvements.

3. **Site Improvement Work.** Home Depot and Midco have provided for the development of the HD Parcel and Midco Parcel (each a "Parcel" and collectively the "Shopping Center") for shopping center and related uses with common roadways and other related on-site and off-site improvements pursuant to the terms of that certain Development Agreement dated of even date herewith by and between Home Depot and Midco (the "Agreement"), and pursuant thereto, Home Depot is required to perform certain site work (collectively referred to as the "Site Improvement Work") both within and outside of the Shopping Center, all as is more particularly described in the Agreement. All of the terms, provisions and conditions of the Agreement are specifically made a part hereof as fully and completely as if set out in full herein.

4. **Easements Granted to HD.** Pursuant to the Agreement, Midco has granted Home Depot certain easements over the Midco Parcel, including construction easements and rights of ingress and egress, all of which rights are more particularly described in the Agreement.

5. **Self Help; Lien Rights.** Reference is particularly made to Section 13 of the Agreement wherein in the event of a default by either party, the non-defaulting party shall have

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certain self-help rights as more particularly provided therein, and with respect to certain unpaid amounts due under the Agreement, the unpaid party has been granted lien rights over the non-paying party's Parcel.

6. **Purpose of Memorandum.** This Memorandum is prepared for the purposes of recording and to give public notice of the rights and obligations of Midco and Home Depot pursuant to the Agreement, and in no way modifies the express and particular provisions of the Agreement.

7. **Successors and Assigns.** It is the intention of Midco and Home Depot that the rights granted to Home Depot and Midco pursuant to the Agreement shall inure to the benefit of Home Depot and Midco and to their respective permitted successors and assigns, as the case may be, and that any lien and/or security interest placed upon a Parcel pursuant to the Agreement shall be binding upon and shall burden such Parcel as provided in the Agreement. Notwithstanding the foregoing, Midco has agreed that it will not, prior to completion by Home Depot of the Site Improvement Work and payment in full to Home Depot of Midco's Share, transfer or convey all or any part of its interest in the Midco Parcel, or assign to a third party any of its obligations under the Agreement without the prior written consent of Home Depot, which consent, provided Midco's Share of Project Costs is held in the Holdback Escrow and the proposed assignee (i) is the ultimate user of the Outlot in question and not the landlord thereof and (ii) has agreed in writing to be bound by the terms and provisions of this Agreement, shall not be unreasonably withheld or delayed. Home Depot's consent would not be required for a transfer of the Outlots to an affiliate of Midco (even if such affiliate is not the ultimate user of the Outlots) provided Midco would not be relieved of any liability under this Agreement, such affiliate assumes in writing all of Midco's obligations under this Agreement and the amount remaining in the Holdback Escrow is sufficient to pay for all of Midco's obligations under this Agreement based on the fact that Home Depot has not theretofore requested additional funds or Changes from Midco.

8. **Home Depot Lien Rights.** Home Depot has been granted those lien rights against the Midco Parcel as are specifically set forth at section 11 (b) of the Agreement, which lien rights are evidenced by this Memorandum and, to the fullest extent permitted by law, the date of perfection and notice of such lien shall be the date of recording of this Memorandum, which shall be the date to which such liens filed by Home Depot shall refer for preference purposes.

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IN WITNESS WHEREOF, this Memorandum has been executed by and through the duly authorized officers of Midco and Home Depot, and the seals of said parties, if any, have been affixed hereto, as of the day and year first above written.

MIDCO:

MIDCO/WHITECO HAMMOND, LLC,
an Indiana limited liability company

By: _____
Name: _____
Title: _____

and

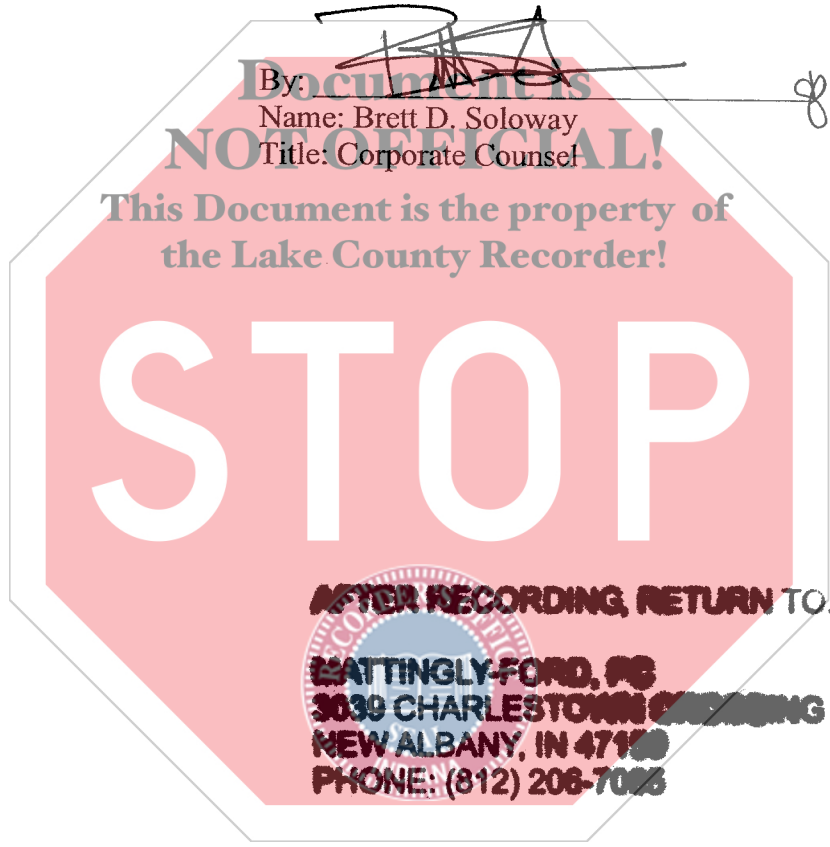
By: _____
Name: _____
Title: _____

HOME DEPOT:

HOME DEPOT U.S.A., INC.,
a Delaware corporation

By: _____
Name: Brett D. Soloway
Title: Corporate Counsel

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IN WITNESS WHEREOF, this Memorandum has been executed by and through the duly authorized officers of Midco and Home Depot, and the seals of said parties, if any, have been affixed hereto, as of the day and year first above written.

MIDCO:

MIDCO/WHITECO HAMMOND, LLC,
an Indiana limited liability company

By: Michael D. Firser
Name: MICHAEL D. FIRSER
Title: MANAGER

and

By: J. Matthew Clark
Name: J. Matthew Clark
Title: Manager

HOME DEPOT:

HOME DEPOT U.S.A., INC.,
a Delaware corporation



STATE OF IL)
COUNTY OF COOK) SS.

I, Michael Nortman, a Notary Public in and for said County in the State aforesaid, do hereby certify that Michael D. Fittell, the Manager of Midco/Whiteco Hammond LLC, an Indiana limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that s/he signed and delivered such instrument as her/his own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 2nd day of June, 2005.



Notary Public

My Commission Expires:



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Bryanne Truiett a Notary Public in and for said County in the State aforesaid, do hereby certify that Brett D. Soloway, the Corporate Counsel of Home Depot U.S.A., Inc., a Delaware corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Corporate Counsel, appeared before me this day in person and acknowledged that s/he signed and delivered such instrument as her/his own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 2nd day of June, 2005.

Bryanne Truiett
Notary Public

My Commission Expires: 12/2/08

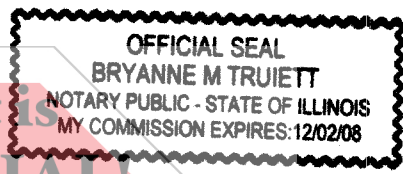


EXHIBIT A

HD Parcel

Tract 1:

Lot 1 of the final plat of Home Depot-Woodmar Addition of record in Plat Book 97, Page 36, in the Lake County, Indiana, Recorder's Office.

Tract 2:

Outlot A of the final plat of Home Depot-Woodmar Addition of record in Plat Book 97, Page 36, in the Lake County, Indiana, Recorder's Office.



EXHIBIT B

Midco Parcel

Outlot 1:

Lot 3 of the final plat of Home Depot-Woodmar Addition of record in Plat Book 97, Page 36, in the Lake County, Indiana, Recorder's Office.

Outlot 2:

Lot 2 of the final plat of Home Depot-Woodmar Addition of record in Plat Book 97, Page 36, in the Lake County, Indiana, Recorder's Office.



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