

(SEAL)

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

FILE

BARNSTABLE, ss.

MISCELLANEOUS CASE
NO. 02 MISC 281116 (GHP)

HOME DEPOT U.S.A., INC.,

Plaintiff,

v.

THE CAPE COD COMMISSION,

Defendant.

ORDER
APPROVING
FIRST AMENDMENT TO
AMENDED AND RESTATED
AGREEMENT FOR JUDGMENT

On June 10, 2003, the court (Piper, J.) allowed a motion brought jointly by plaintiff Home Depot U.S.A., Inc. and defendant The Cape Cod Commission pursuant to Mass. R. Civ. P. 58(a) for "entry of judgment" in accordance with an agreement for judgment dated May 19, 2003. On January 7, 2007 the court (Piper, J.) entered an order approving the parties' Amended and Restated Agreement for Judgment dated as of November 26, 2006 ("Amended and Restated Agreement"). Now before the court is the parties' joint Motion for Entry of First Amendment to Amended and Restated Agreement for Judgment, submitted on October 18, 2010, which asks for the court's approval of the First Amendment to Amended and Restated Agreement for Judgment executed by the parties and dated September 27, 2010 ("First Amendment"). The court treats the pending motion as one for approval of the First Amendment pursuant to Land Court Rule 10, and as a request that the First Amendment, as so approved, modify the Amended and Restated Agreement.

On consideration of the joint motion, good cause therefor appearing, it is ALLOWED. The First Amendment is hereby approved by the court pursuant to Land Court Rule 10, and amends the Amended and Restated Agreement previously approved by the court. As provided for in that rule and in Mass. R. Civ. P. 58(a), the Amended and Restated Agreement, as amended

M.R. BOOK 21761 PAGE 140

M.R. BOOK 21761 PAGE 108

M.R. BOOK 17732 PAGE 51

and modified by the First Amendment, is to constitute the judgment of the court for all purposes. This Order, or a certified copy of it, together with the First Amendment, or a certified copy of it, may, upon payment of all fees required by law, be recorded by the parties in the Barnstable Registry of Deeds ("Registry"), and may there be referenced on the margin of the record of the Amended and Restated Agreement, if and where recorded in the Registry.

So Ordered.

[Handwritten signature]

By the Court. (Piper, J.)

Attest:

Deborah J. Patterson
Recorder

Dated: November 2, 2010.

A TRUE COPY
ATTEST:

Deborah J. Patterson
RECORDER

*#60
Singer + Singer*

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

FILED

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BARNSTABLE, ss.

MISCELLANEOUS
CASE NO. 02MISC281116

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HOME DEPOT U.S.A., INC.

Plaintiff.

v.

THE CAPE COD COMMISSION

Defendant.

MOTION FOR ENTRY OF FIRST AMENDMENT TO AMENDED AND RESTATED
AGREEMENT FOR JUDGMENT

The parties move, pursuant to Massachusetts Rules of Civil Procedure, that the Amended and Restated Agreement for Judgment which entered on January 2, 2007, be amended in the form attached hereto and that such amendment be entered. The parties originally entered into an Agreement for Judgment dated July 25, 2003, pursuant to an agreement between the parties settling all of their differences and providing for subsequent review and assessment by the parties. After such review and assessment was completed, the Agreement for Judgment was vacated and an Amended and Restated Agreement for Judgment was entered on January 2, 2007, at the request of the parties. Now, in accordance with an additional agreement between the parties to alter the site and allow for outside sales with conditions, the parties desire that their agreement as amended become the First Amendment to the Amended and Restated Agreement for Judgment.

M.R. BOOK 21761 PAGE 140

M.R. BOOK 21761 PAGE 108

M.R. BOOK 17732 PAGE 51

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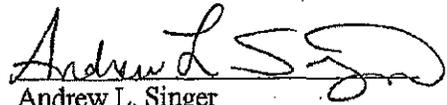
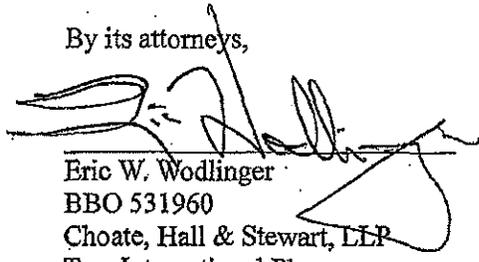
For the foregoing reasons, the parties respectfully request that the 2007 Amended and Restated Agreement for Judgment be amended in the form attached hereto and that such amendment be entered.

THE CAPE COD COMMISSION

HOME DEPOT U.S.A., INC.

By its attorneys,

By its attorneys,



Eric W. Wodlinger
BBO 531960
Choate, Hall & Stewart, LLP
Two International Place
Boston, MA 02110
617-248-5000
ewodlinger@rackemann.com

Andrew L. Singer
BBO 632418
Law Office of Singer & Singer, LLC
26 Upper County Road, P.O. Box 67
Dennisport, MA 02639
508-398-2221
alsinger@singer-law.com

Date: 9/29/30

Date:

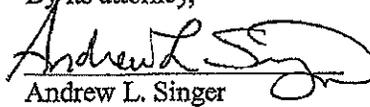
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DATE: October 15, 2010

CERTIFICATE OF SERVICE

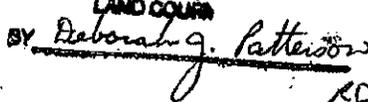
I hereby certify that I served a true copy of the foregoing by first class mail, postage pre-paid, on the attorney for the plaintiff/defendant as follows:

Plaintiff
By its attorney,


Andrew L. Singer

Eric W. Wodlinger
Rackemann, Sawyer & Brewster
160 Federal Street
Boston, MA 02110
617-951-1136
ewodlinger@rackemann.com

3 pages
I HEREBY ATTEST AND CERTIFY ON
NOV. 17th 2010 THAT THE
FORGING DOCUMENT IS A FULL
ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY.

DEBORAH J PATTERSON
RECORDER
LAND COURT
BY 
RD.

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FIRST AMENDMENT TO
AMENDED AND RESTATED AGREEMENT FOR JUDGMENT

This First Amendment to Amended and Restated Agreement for Judgment is entered into as of this day of September, 2010, by and between the Cape Cod Commission (Commission) and Home Depot U.S.A., Inc. (Home Depot).

WHEREAS, the Commission and Home Depot entered into an Amended and Restated Agreement for Judgment dated November 26, 2006, and

WHEREAS, the Commission and Home Depot now wish to amend such Amended and Restated Agreement for Judgment to allow outside sales with conditions.

NOW THEREFORE, the parties hereto stipulate and agree as follows:

1. The Third Whereas Clause of the Amended and Restated Agreement for Judgment is hereby deleted in its entirety and replaced with the following:

“WHEREAS, Home Depot has proposed to develop a so-called ‘Home Depot Lite’ store consisting of approximately 79,995 sq. ft. of ground floor space and 2,105 sq. ft. of mezzanine space within the existing building (including demolition of the existing 14,000 sq. ft. mezzanine) and no more than 9,953 sq. ft. of outside area adjacent to the existing building for a seasonal garden facility and Christmas tree fenced sales area, as shown on plans respectively entitled ‘Home Depot USA, Inc., Store Number 2612, Hyannis, Massachusetts, 65 Independence Drive,’ prepared by Greenberg Farrow Architecture, Engineering, Planning, and dated 3/4/02 and last revised 3/28/03, Sheet titled ‘Floor Plans,’ Sheet Number A1.0 (Exhibit A), and ‘Site Plan, Home Depot Pop-Up Garden Center, 65 Independence Drive, in Hyannis, Massachusetts’ prepared by BSC Group, 349 Route 28, Unit D, W. Yarmouth, Massachusetts 02673, dated May 4, 2010, and revised 7/7/10, Scale 1" = 40 ft., Sheet 2 of 3 (Exhibit B)(collectively Plans), in and adjacent to a retail building, together with associated parking and access (collectively Project) formerly occupied by Bradlees at 65 Independence Drive, Southwind Plaza, in the Town of Barnstable, MA (Premises); and”;

2. A new sentence as follows is hereby added to the end of Paragraph 2 of the Amended and Restated Agreement for Judgment:

“[...Hazardous Materials as that term is defined in paragraph 3 below.] Notwithstanding the above, Home Depot shall not keep, use or maintain any Hazardous Materials in the outside seasonal garden facility and Christmas tree fenced sales area at any time.”

3. Paragraph 11 of the Amended and Restated Agreement for Judgment is hereby deleted in its entirety and replaced with the following:

“11. Home Depot shall operate the Project in accordance with the following: 1) The Project will occupy only 79,995 square feet of ground floor space and 2,105 square

feet of mezzanine space within the existing building; 2) The Project will utilize store racking with shelving no more than 12 feet in height; 3) The store will have no public food vending (although vending machines are allowed); 4) All forklift trucks will operate on electricity/batteries or propane gas; 5) The Project will occupy no more than 9,953 square feet of outside area adjacent to the existing building as shown on Exhibit B a) for the annual installation of a seasonal garden facility to operate from March 20th through September 20th each year with annual installation and removal scheduled for 10 days before and 10 days after such dates, respectively, and b) for the annual installation of a smaller fenced area also to be located in the portion of the property to be seasonally used by the garden facility to sell Christmas trees from November 15th through December 31st each year with annual installation and removal scheduled for 10 days before and 10 days after such dates, respectively; and 6) There will be no increase in floor space in the existing building and no increase in the outside seasonal garden facility and Christmas tree fenced sales area for the operation of the store."

Executed under seal by the authorized representatives of Home Depot U.S.A., Inc., and the Cape Cod Commission this 27th day of September, 2010.

For the Cape Cod Commission,

Royden Richardson, Chairman Date 9/27/2010

For Home Depot U.S.A., Inc.,

Jennifer M. Evans, Attorney Date 10-7-2010

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

September 27, 2010

Then personally appeared the above named Royden Richardson, Chair of the Cape Cod Commission, known to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of the Cape Cod Commission, before me.

Gail P. Hanley
Notary Public
My Commission Expires: 10.13.11

STATE OF GEORGIA

Cobb, ss:

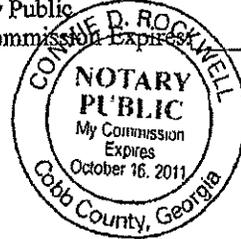
October 7, 2010

Then personally appeared the above named Jennifer M. Evans, the Attorney of Home Depot U.S.A., Inc., known to me through satisfactory evidence of identification, which was Personal Knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of Home Depot U.S.A., Inc., before me.

Conni D. Rockwell

Notary Public

My Commission Expires



INCUMBENCY/SECRETARIAL CERTIFICATE

The undersigned Assistant Secretary of Home Depot U.S.A., Inc., a Delaware corporation (the "Corporation"), hereby certifies:

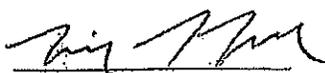
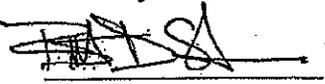
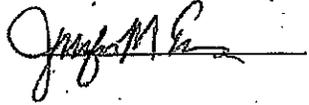
I. That the resolutions below constitute a true and correct copy of the resolutions contained in the Home Depot U.S.A., Inc., Unanimous Written Consent of the Board of Directors in Lieu of A Special Meeting, effective March 3, 2008, and that these resolutions have not been amended, annulled, rescinded or revoked and remain in full force and effect as of the date hereof.

RESOLVED, that the Executive Vice President, Secretary and General Counsel and the Vice President - Real Estate, each company employee with the title of Senior Counsel - Real Estate Law, Counsel - Real Estate Law, Senior Attorney - Real Estate Law, and Attorney - Real Estate Law, and each of them acting alone or together, or their duly delegated designee, are hereby authorized and directed, in the name of the Corporation, to take such steps as are necessary or desirable to effect the Corporation's policy of expansion and maintenance of its properties including, but not limited to, the acquisition, disposition or financing of real estate, the execution of Leases, Reciprocal Easement Agreement, Development Agreements, Easements, Servitudes, Right of Way, Assignments and any amendments or modifications to the foregoing, or any other instrument required to accomplish the aforesaid Corporate purposes; and

FURTHER RESOLVED, that the Executive Vice President, Secretary and General Counsel and the Vice President - Real Estate, each company employee with the title of Senior Counsel - Real Estate Law, Counsel - Real Estate Law, Senior Attorney - Real Estate Law, and Attorney - Real Estate Law, and each of them acting either alone or together, or their duly delegated designee, are hereby authorized and directed, in the name of the Corporation, to take, or cause to be taken, any and all actions and to execute and deliver any and all such other contracts, assignments, easements, conveyances, deeds, leases, subleases, agreements, certificates, instruments or any other documents as such individual or delegated designee may consider necessary or desirable to carry out the foregoing resolution and the transactions contemplated thereby; and

FURTHER RESOLVED, that these resolutions hereby revoke and supersede any other resolutions that heretofore granted the delegation of corporate authority to execute and deliver real estate documents by and on behalf of the Corporation.

2. The persons named below were on the date hereof the duly designated and qualified signatories of the Corporation, as set opposite his or her respective name, and that the signature appearing opposite his or her name, is the genuine facsimile signature of said signatory:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Michael C. LaFerle	Vice President Real Estate	
Brett D. Soloway	Senior Counsel Real Estate Law	
Erika M. Strawn	Senior Attorney Real Estate Law	
Jennifer M. Evans	Attorney Real Estate Law	

IN WITNESS WHEREOF, the undersigned has hereunto affixed the seal of the Corporation and set his/her signature, on this, the 15th day of October, ~~2008~~ 2010.




 Name: STACY INGRAM
 Title: ASSISTANT SECRETARY

CLERK'S CERTIFICATE OF INCUMBENCY AND AUTHORITY

The undersigned Clerk of the Cape Cod Commission hereby certifies as follows:

1. Royden Richardson is the duly appointed Chair of the Cape Cod Commission.
2. That the resolution below is a true and accurate copy of the Resolution passed by vote of the Executive Committee on May 24, 2010 and that this resolution has not been amended, annulled, rescinded or revoked and remains in full force and effect as of the date hereof.

RESOLVED that Royden Richardson, Chair of the Cape Cod Commission, is hereby authorized and empowered on behalf of the Commission to execute the First Amendment to Amended and Restated Agreement for Judgment by and between the Cape Cod Commission and Home Depot USA, Inc. in the form executed by Home Depot USA, Inc. on or about September 27, 2010, a true copy of which is on file in the Commission's Home Depot, Hyannis file.

IN WITNESS WHEREOF, the undersigned Clerk of the Commission has signed this Certificate on this 12th day of October 2010.

Gail P. Hanley
Gail P. Hanley, Clerk

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

October 12, 2010

Before me, the undersigned notary public, personally appeared the above named Gail Hanley, whose name is signed on the preceding document, and such person acknowledged to me that she signed such document voluntarily, for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.

Paul A. Emerson
Notary Public:
My Commission Expires: 6 years

I HEREBY ATTEST AND CERTIFY ON
NOV 17 2010 THAT THE
FORGONE DOCUMENT IS A FULL
ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY.

DEBORAH J PATTERSON
RECORDER
LAND COURT

BY Deborah J. Patterson
KD.

BARNSTABLE REGISTRY OF DEEDS