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Doc#: 0330210135
Eugene "Gene" Moore Fee: \$44.50
Cook County Recorder of Deeds
Date: 10/29/2003 01:49 PM Pg: 1 of 11

Record and return to:

Principal Life Insurance Company
c/o Principal Real Estate Investors, LLC
801 Grand Avenue
Des Moines, IA 50392-1360
ATTN: Carol Kraayenbrink

NON-DISTURBANCE AND ATTORNMENT AGREEMENT 753634

THIS AGREEMENT, made and entered into as of the 24th day of October, 2003, by and between PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation with a principal office at c/o Principal Real Estate Investors, LLC, 801 Grand Avenue, Des Moines, Iowa 50392-1360 (hereinafter called "Lender") and DEVON LINCOLN PROPERTIES LLC, an Illinois limited liability company ("Devon"), and LASALLE BANK NATIONAL ASSOCIATION, as Successor Trustee to American National Bank and Trust Company of Chicago, a state banking association, not personally, but as Trustee under that certain Trust Agreement dated November 10, 1987, and known as Trust No. 103992-02, as "Lessor" ("Lessor" to be construed as "Lessors" if the context so requires)(Devon and Lessor to be collectively referred to as "Borrower") with their principal office at c/o George Annes, 134 N. LaSalle Street, Suite 1260, Chicago, IL 60602, and HOME DEPOT U.S.A., INC., a Delaware corporation, with its principal office at 2455 W. Paces Ferry Road N.W. Atlanta, GA 30339 (hereinafter called "Lessee");

WITNESSETH:

WHEREAS, Lessee has by a written Second Amended and Restated Sublease dated May 5, 2003 (hereinafter called the "Lease") leased from Lessor all or part of certain real estate and improvements thereon located in the city of Chicago, state of Illinois, as more particularly described in Exhibit A attached hereto (the "Demised Premises"); and

WHEREAS, Borrower is encumbering the Demised Premises as security for a loan (the "Loan") from Lender to Borrower (the "Mortgage"); and

WHEREAS, Lessee, Borrower and Lender have agreed to the following with respect to their mutual rights and obligations pursuant to the Lease and the Mortgage;

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) paid by each party to the other and the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

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(1) In the event of any foreclosure of the Mortgage or any conveyance in lieu of foreclosure, provided that the Lessee shall not then be in default beyond any grace period under the Lease and that the Lease shall then be in full force and effect, then Lender shall neither terminate the Lease nor join Lessee in foreclosure proceedings, nor disturb Lessee's possession, and the Lease shall continue in full force and effect as a direct lease between Lessee and Lender. Lender also agrees that notwithstanding any such foreclosure, provided Lender has consented in writing to any Sub-Tenant Non-Disturbance Agreement and/or Leasehold Mortgage Consent and Agreement entered into by Lessor in connection with the Lease (collectively the "Leasing Agreements") Lender shall recognize the validity of any such Leasing Agreements and any rights of possession thereunder (and under the underlying lease or leasehold mortgage, as the case may be) and shall not disturb any such rights of possession except upon default of a party under the Lease or applicable sub-tenant lease and only to the extent of Lessor's remedies available under the relevant agreement. Notwithstanding the prior sentence, Lender acknowledges that (i) Lessee is under no obligation to seek Lender's consent to any sublease or sub-sublease, (ii) Lender does not have any consent rights with respect to any such sublease or sub-sublease, (iii) nothing in this agreement shall affect Lessor's obligations to recognize any subtenants or sub-subtenants pursuant to the Lease and Lessor shall have such right without the consent of Lender, and (iv) Lender's consent right described above only shall be a precondition to Lender's recognition of any Leasing Agreement and the failure of Lessor or Lessee to seek or to obtain Lender's consent shall not affect the enforceability of such agreement among the parties thereto. Lender further agrees not to join Lessee in any foreclosure proceeding except to the extent necessary under applicable law, but such joinder shall not be in derogation of the rights of Lessee as set forth in this Agreement and Lease.

With regard to those Leasing Agreements for which Lender's consent is required, if: (a) Borrower provides Lender with a written request for consent to such document and the request is accompanied by: (i) a copy of the Lease or sublease and non-disturbance agreement (which form and content of such agreement must be acceptable to Lender) or the leasehold mortgage documentation and information (whichever is applicable); and (ii) copies of the most recently completed balance sheets and income statements for any lessee (if other than Home Depot), to the extent reasonably available; (b) the request is given in the manner provided for the giving of Notices in the Mortgage; (c) the request is boldly noted as a request for consent to a Sub-Tenant Non-Disturbance Agreement or Leasehold Mortgage Consent Agreement, whichever is applicable, for which Lender's consent is required and specifically states that such document will be deemed approved if Lender fails to respond within 10 business days; and (d) in the event Lender fails to respond to Borrower's request for consent within the time period set forth in subparagraph (c) above, then said consent shall be deemed to have been given.

Lender and Borrower hereby agree that Lender must respond to such request for consent within the above specified 10 business day period. In the event additional information is reasonably required by Lender, Borrower shall provide such information within 5 business days of Lender's request. In the event Lender fails to respond to Borrower's request within 10

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business days of Lender's actual receipt of the additional information, then said consent shall be deemed to have been given. Lender agrees that Lender's consent to any Leasing Agreements shall not be unreasonably withheld.

(2) Within 5 business days after request by Lessee, Borrower will provide to Lender the request (and accompanying information) described in Section 1 above.

(3) After the receipt by Lessee of notice from Lender of any foreclosure of the Mortgage or any conveyance of the Demised Premises in lieu of foreclosure, Lessee will thereafter attorn to and recognize Lender or any purchaser at any foreclosure sale or otherwise as its substitute lessor on the terms and conditions set forth in the Lease.

(4) Lessee hereby agrees that if Lessor defaults under the Lease, Lessee will provide a copy of the default notice to Lender, and Lender shall be entitled to remedy the same within the time period set forth in the Lease, if any, during which Landlord may affect such cure.

(5) All condemnation awards and proceeds of insurance shall be applied in the manner provided in the Lease.

(6) This Agreement and its terms shall be governed by the laws of the state where the Demised Premises are located and shall be binding upon and inure to the benefit of Lender, Borrower and Lessee and their respective successors and assigns, including, without limitation, any purchaser at any foreclosure sale or otherwise. This Agreement may not be modified orally or in any manner other than by an agreement, in writing, signed by the parties.

(7) This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts when taken together shall constitute but one agreement.

(Signatures on Next Page)

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IN WITNESS WHEREOF, this Agreement has been fully executed under seal on the day and year first above written.

PRINCIPAL LIFE INSURANCE COMPANY,
an Iowa corporation, Lender

By: PRINCIPAL REAL ESTATE INVESTORS, LLC,
a Delaware limited liability company, its authorized
signatory

By [Signature]
Name: [Signature]
Title: Senior Closing Consultant

By [Signature]
Name: Steven Traynor
Title: Counsel

(Signatures continued on Next Page)

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

By  _____ *emc*
Name: **Brett D. Soloway**
Title: **Corporate Counsel - Real Estate**

By _____
Name:
Title:

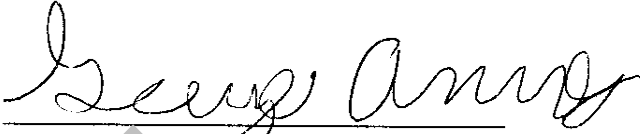
(Signatures continued on next page)

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DEVON LINCOLN PROPERTIES LLC, an
Illinois limited liability company, Borrower

By 

Name: George P. Annes

Title: Manager


(Borrower's signature continued on the following page)

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LASALLE BANK NATIONAL ASSOCIATION,
as Successor Trustee under Trust Agreement dated
November 10, 1987, Trust No. 103992-02, Borrower ~~and not personally~~

By 
Name: **THOMAS POPOVICS**
Title: **ASSISTANT VICE PRESIDENT**

This instrument is executed by LaSalle Bank National Association, not personally, but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by LaSalle Bank National Association are undertaken by it solely as Trustee, as aforesaid, and not individually and all statements herein made are made in good faith and belief and are to be construed accordingly and no personal liability shall be asserted or be enforceable against LaSalle Bank National Association by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this instrument.

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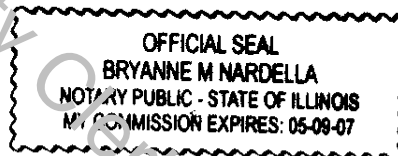
STATE OF Illinois)
)
COUNTY OF COOK)

I do hereby certify that on this 14th day of October, 2003, before me Bryanne Nardella Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared Brett D. Soloway, known to me and to be the Corporate Counsel of HOME DEPOT U.S.A., INC., a Delaware corporation who being by me duly sworn, did depose and say that (s)he is the Corporate Counsel of HOME DEPOT U.S.A., INC., a Delaware corporation, the corporation described in an which executed the foregoing instrument; that (s)he knows the seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that (s)he signed his/her name thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal the day and year in this certificate first above written.

My commission expires: 5/9/07

Bryanne Nardella
Notary Public



PROPOSED BY COOK COUNTY CLERK'S OFFICE

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 20th day of October, in the year 2003, before me, the undersigned, a Notary Public in and for said County and State, personally appeared George P. Annes, personally known to me (or proved to me on the basis of satisfactory evidence) to be a Manager of Devon Lincoln Properties LLC, an Illinois limited liability company, that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of the company for the uses and purposes therein set forth.

Signature Laura Beth Miller

Name (Typed or Printed)
Notary Public in and for said County and State

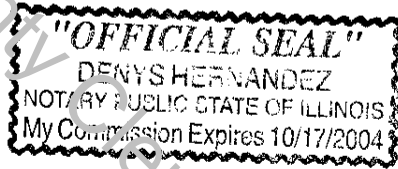


STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

On this 24th day of October, in the year 2003, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Thomas Popovics personally known to me (or proved to me on the basis of satisfactory evidence) to be the ~~ASSISTANT VICE PRESIDENT~~ of LASALLE BANK NATIONAL ASSOCIATION, that he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of the company for the uses and purposes therein set forth.

Signature Denys Hernandez

Name (Typed or Printed)
Notary Public in and for said County and State

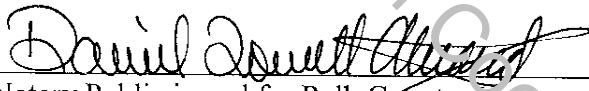


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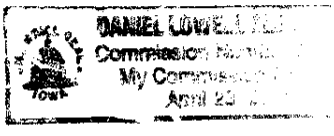
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STATE OF IOWA)
)
COUNTY OF POLK)

On this 24th day of October, 2003, before me, the undersigned, a Notary Public in and for the said State, personally appeared Carol L. Kraayenbrink and Steven P. Traynor, to me personally known to be the identical persons whose names are subscribed to the foregoing instrument, who being by me duly sworn, did say that they are the Senior Closing Consultant and Counsel, respectively, of PRINCIPAL REAL ESTATE INVESTORS, LLC, a Delaware limited liability company, its authorized signatory of PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation, Lender, and that the seal affixed to the instrument is the seal of Principal Real Estate Investors, LLC; that the instrument was signed and sealed on behalf of the company by Principal Real Estate Investors, LLC, as authorized signatory of PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation, Lender, by authority of the Board of Directors of PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation, Lender; and that the aforesaid individuals each acknowledged the execution of the foregoing instrument to be the voluntary act and deed of Principal Real Estate Investors, LLC, as authorized signatories of said company, by it and by them voluntarily executed.



Notary Public in and for Polk County, Iowa



Polk County Clerk's Office

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EXHIBIT A 753634

THE LAND REFERRED TO IS IN THE STATE OF ILLINOIS, COUNTY OF COOK AND IS DESCRIBED AS FOLLOWS:

THAT PART OF THE NORTHEAST FRACTIONAL $\frac{1}{4}$ OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHEASTERLY OF THE NORTHEASTERLY LINE OF LINCOLN AVENUE (AS WIDENED); NORTHWESTERLY OF THE NORTHWESTERLY LINE OF MCCORMICK ROAD (ALSO KNOWN AS KIMBALL AVENUE) AND SOUTH OF THE SOUTH LINE OF DEVON AVENUE (AS WIDENED).

EXCLUDING THEREFROM THE FOLLOWING:

A PART OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN.

COMMENCING AT THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SAID SECTION 2; THENCE ON AN ASSUMED BEARING OF SOUTH 88 DEGREES, 19 MINUTES, 10 SECONDS WEST ALONG THE NORTH LINE OF SAID QUARTER-SECTION, A DISTANCE OF 697.58 FEET (212.624 METERS); THENCE SOUTH 01 DEGREE, 29 MINUTES, 58 SECONDS EAST, A DISTANCE OF 50.00 FEET (15.240 METERS) TO THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF DEVON AVENUE, WITH THE WESTERLY RIGHT OF WAY LINE OF MCCORMICK BOULEVARD, AS DESIGNATED UPON THE PLAT OF SURVEY FOR HIGHWAY PURPOSES RECORDED MAY 2, 1952 AS DOCUMENT 13784159, SAID POINT BEING THE POINT OF BEGINNING; THENCE SOUTH 01 DEGREE, 29 MINUTES, 58 SECONDS EAST ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 3.59 FEET (1.094 METERS); THENCE SOUTHERLY 19.38 FEET (5.906 METERS) ALONG SAID WESTERLY RIGHT OF WAY LINE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 450.51 FEET (137.316 METERS), THE CHORD OF SAID CURVE BEARS SOUTH 00 DEGREE, 17 MINUTES, 05 SECONDS WEST, A DISTANCE OF 19.37 FEET (5.905 METERS); THENCE NORTH 45 DEGREES, 50 MINUTES, 28 SECONDS WEST, A DISTANCE OF 22.50 FEET (9.752 METERS) TO THE SOUTHERLY RIGHT OF WAY LINE OF DEVON AVENUE; THENCE NORTH 88 DEGREES, 19 MINUTES, 10 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 22.97 FEET (7.000 METERS) TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PERM TAX#

13-02-202-005-0000	13-02-202-008-0000	13-02-202-009-0000	13-02-202-010-0000
13-02-202-012-0000	13-02-202-013-0000	13-02-202-015-0000	13-02-202-016-0000
13-02-202-017-0000	13-02-202-018-0000	13-02-202-020-0000	13-02-202-021-0000
13-02-202-022-0000			

CK\dt\s:753634\exha
9/25/03