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Doc#: 0726260142 Fee: \$34.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/19/2007 03:51 PM Pg: 1 of 6

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

Katten Muchin Rosenman LLP)
401 S. Tryon St, Suite 2600)
Charlotte, NC 28202)
Attn: Daniel S. Huffenus, Esq. e Law)

(Space Above for Recorder's Use)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made and entered into as of this 13th day of September, 2007, by and between, BEAR STEARNS COMMERCIAL MORTGAGE INC., a New York corporation ("Lender") and HOME DEPOT U.S.A., INC., a Delaware corporation ("Tenant"), having its principal office at 2455 Paces Ferry Road, Atlanta, Georgia 30339, Attention: Vice-President - Real Estate Law Group.

RECITALS

WHEREAS, by a Lease dated July 21, 1993, as the same may have been amended, modified, supplemented, extended or renewed from time to time (the "Lease"), Cole MT Broadview IL, LLC ("Landlord") as successor in interest to HD - TB, L.L.C. ("Original Landlord") has leased to Tenant and Tenant has leased from Landlord all of that certain property in the County of Cook, State of Illinois, as more particularly described in the Lease (the "Premises");

WHEREAS, Lender is the current holder of a mortgage ("Mortgage") dated 2007, executed by Landlord securing an indebtedness in the original principal amount of \$3,600,000, and recorded Sept 19, 2007, in the Official Records of Cook County as Instrument No 0726260142 which constitutes a lien against the real property legally describe in Exhibit "A" attached hereto, which includes the Premises; and

WHEREAS, Tenant desires that Lender recognize Tenant's rights under the Lease and Tenant is willing to attorn to a purchaser at a foreclosure, if any, pursuant to the Mortgage, if Lender and such purchaser recognize Tenant's rights under the Lease.

NOW THEREFORE, in consideration of the sum of \$10.00 in hand paid and other good and valuable consideration, receipt of which is hereby acknowledged, and for and in consideration of their respective covenants herein made, the parties agree as follows:

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1. The Lease is and shall be subject and subordinate to the lien of the Mortgage insofar as it affects the real property of which the Premises form a part, to the full extent of the principal sum secured thereby and interest thereon, and any other sums secured thereby, except as noted herein.

2. In the event of foreclosure of the Mortgage, transfer of the Premises to Lender by deed in lieu of foreclosure or upon a sale of the Premises to Lender pursuant to a trustee's power of sale, (a) the Lease shall continue in full force and effect as a direct lease and agreement between the succeeding owner of the Premises and Tenant upon and subject to all of the terms, covenants and conditions of the Lease, (b) the rights of Tenant under the Lease shall not be disturbed or diminished and Tenant shall remain in possession of the Premises in accordance with the terms and conditions of the Lease, and (c) no term or provision of the Lease shall be altered.

3. Tenant agrees to attorn to and accept any such successor as a result of foreclosure, or deed in lieu thereof, as Landlord under the Lease and to be bound by and perform all the obligations imposed by the Lease.

4. Lender agrees that Tenant's possession of the Premises shall not be disturbed, and that Lender shall be bound by all of the obligations imposed on Landlord by and in the Lease.

5. Notwithstanding any contrary or inconsistent provision of the Mortgage, the proceeds of any fire and extended coverage insurance carried by Landlord pursuant to the terms of the Lease shall be handled and/or applied as set forth in the Lease.

6. In the event of a condemnation of all or any portion of the Premises, the obligations of the parties respecting the repair and reconstruction of the Premises, the allocation and disposition of the condemnation award, and Tenant's rights respecting such award, shall be as set forth in the Lease, and, controlling over any contrary or inconsistent provision of the Mortgage, no provision of the Mortgage shall limit or affect Tenant's right to seek compensation in the event of a total or partial condemnation.

7. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Premises are located.

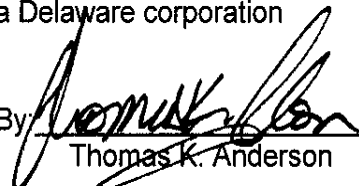
8. This Agreement shall also bind and benefit the heirs, legal representatives, successors and assigns of the respective parties hereto, and all covenants, conditions and agreements herein contained shall be construed as running with the land. This Agreement is not intended to and shall not amend or modify the Lease. In the event of an inconsistency or conflict between the terms of this Agreement and the terms of the Lease, or between the terms of the Mortgage and the terms of the Lease, the terms of the Lease shall prevail.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

TENANT:

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

By: 
Thomas K. Anderson

Its: Sr. Corporate Counsel Real Estate Law


Witness
Print Name: Z. Melanie Yung


Witness
Print Name: EVELYN CLAYTON

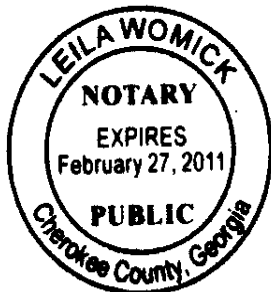


STATE OF GEORGIA)
) SS.:
COUNTY OF COBB)

On the ____ day of September, 2007, before me personally came, Thomas K Anderson who, being duly sworn did depose and say that he is Sr. Corporate Counsel of the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.


Notary Public

[Notary Seal]



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LENDER:

BEAR STEARNS COMMERCIAL MORTGAGE, INC., A New York corporation

Debbie Heitzler
Witness
Print Name: **Debbie Heitzler**

By: Michael A. Forastiere
Michael A. Forastiere
Managing Director

Charlotte Higgins
Witness
Print Name: **Charlotte Higgins**

Katten Muchin Rosenman LLP
401 S. Tryon St, Suite 2600
Charlotte, NC 28202
Attn: Daniel S. Huffenus, Esq.

STATE OF NEW YORK)

:ss.

COUNTY OF RICHMOND)

On this 13th day of September, 2007, before me, the undersigned officer, personally appeared Michael A. Forastiere having an address at 383 Madison Avenue, New York, New York 10179, and personally known and acknowledged himself to me (or proved to me on the basis of satisfactory evident to be the Managing Director of **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, (hereinafter, the "Corporation"), and that as such officer(s), being duly authorized to do so pursuant to its bylaws or a resolution of its board of directors, executed, subscribed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself in their authorized capacity as such office(s) as his free and voluntary act and deed and the free and voluntary act and deed of said Corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Alaina Ferraioli
Notary Public, State of New York
No. 01FE6173332
Qualified in Richmond county
Commission expires August 27, 2011

Alaina Ferraioli
Notary Public
NOTARY SEAL

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EXHIBIT A

LEGAL DESCRIPTION

Parcel 1:

Lot 10 in Broadview Village Square, being a subdivision of part of the Southeast $\frac{1}{4}$ of Section 22, Township 39 North, Range 12, East of the Third Principal Meridian, according to the plat thereof recorded March 8, 1994 as document number 94212972, in Cook County, Illinois.

Parcel 2:

Lots 2, 8 and 9 (Except that part of Lot 9 described by commencing at the Northwest corner of Lot 7 of said Broadview Village Square; thence South 00 degrees 05 minutes 44 seconds West along the West line of said Lot 7, 79.84 feet to the point of beginning; thence North 89 degrees 54 minutes 16 seconds West, 10.08 feet; thence North 00 degrees 05 minutes 44 seconds West, 7.33 feet; thence North 89 degrees 54 minutes 16 seconds West, 115.00 feet; thence South 47 degrees 05 minutes 44 seconds West, 35.36 feet; thence South 00 degrees 05 minutes 44 seconds West, 117.50 feet; thence South 89 degrees 54 minutes 16 seconds East, 25.00 feet; thence South 00 degrees 05 minutes 44 seconds West, 32.50 feet; thence South 89 degrees 54 minutes 16 seconds East, 125.08 feet to a point on the West line of Lot 7 in said Broadview Village Square; thence North 00 degrees 05 minutes 44 seconds East, along the West line of said Lot 7 in Broadview Village Square, 167.67 feet to the point of beginning), and Lot 12 in Broadview Village Square, being a subdivision of part of the Southeast $\frac{1}{4}$ of Section 22, Township 39 North, Range 12, East of the Third Principal Meridian, according to the plat thereof recorded March 8, 1994 as document number 94212972, in Cook County, Illinois.

Parcel 3:

Portions of the following described Lots of Broadview Village Square, being a subdivision of the Southeast $\frac{1}{4}$ of Section 22, Township 39 North, Range 12, East of the Third Principal Meridian, according to the plat thereof recorded March 8, 1994 as document number 94212972 with the Cook County Recorder of Deeds:
Lot 3 and Lot 4 (Except that part described as follows:

The North 165.58 feet of Lot 4 in Broadview Village Square, being a subdivision of the Southeast $\frac{1}{4}$ of Section 22, Township 39 North, Range 12, East of the Third Principal Meridian, according to the plat thereof recorded March 8, 1994 as document number 94212972, said exception being further described by commencing at the Southwest corner of the Southeast $\frac{1}{4}$ of said Section 22; thence North 00 degrees 00 minutes 00 seconds East along the West line of said Southeast $\frac{1}{4}$, 444.36 feet to a point on the extension of the North line of said Lot 4; thence South 89 degrees 54 minutes 16 seconds East along said extension, 60.00 feet to the Northwest corner of Lot 4 for the point of beginning; thence continuing South 89 degrees 54 minutes 16 seconds East along the North line of Lot 4, 363.63 feet; thence South 29 degrees 21 minutes 26 seconds West, 60.42 feet to a point of curvature; thence Southwesterly along a tangential curve to the East having a radius of 500.00 feet, an arc distance of 121.23 feet (The long chord bearing South 22 degrees 24 minutes 41 seconds West, 120.94 feet) to the South line of the North 164.58 feet of Lot 4; thence North 89 degrees 54 minutes 16 seconds West along said South line, 287.91 feet to the West line of Lot 4, said line being 60.00 feet East of and parallel with the West line of said Southeast $\frac{1}{4}$; thence North 00 degrees 00 minutes 00 seconds East along said West line of Lot 4, 164.58 feet to the point of beginning), in Cook County, Illinois.

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Parcel 4:

A portion of Lot 9 described as follows:

Commencing at the Northwest corner of Lot 7 of said Broadview Village Square; thence South 00 degrees 05 minutes 44 seconds West along the West line of said Lot 7, 79.84 feet for a point of beginning; thence North 89 degrees 54 minutes 16 seconds West, 10.08 feet; thence North 00 degrees 05 minutes 44 seconds East, 7.33 feet; thence North 89 degrees 54 minutes 16 seconds West, 115.00 feet; thence South 45 degrees 05 minutes 44 seconds West, 35.36 feet; thence South 00 degrees 05 minutes 44 seconds West, 117.50 feet; thence South 89 degrees 54 minutes 16 seconds East, 25.00 feet; thence South 00 degrees 05 minutes 44 seconds West, 32.50 feet; thence South 89 degrees 54 minutes 16 seconds East, 125.00 feet to a point on the West line of said Broadview Village Square; thence North 00 degrees 05 minutes 44 seconds East, along the West line of said Lot 7 in Broadview Village Square, 167.67 feet, to the point of beginning, in Cook County, Illinois.

Parcel 5:

Non-Exclusive Easements for the benefit of parcels 1,2,3 and 4 for ingress and egress for pedestrian and vehicular access and for utilities as set forth in the Operation and Easement Agreement dated July 20, 1993 and recorded September 2, 1993 as document number 93703155 over and across Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in Broadview Village Square aforesaid

First amendment to Operation Easement Agreement dated September 12, 1994 and recorded September 22, 1994 as document 94828436

Second Amendment to Operation and easement agreement dated July 01, 2005 and recorded September 13, 2006 as document 0625639059

Partial Assignment of rights under Operation and Easement agreement and restrictions recorded December 03, 1993 as document 93991800

First amendment to partial assignment of rights under operation and easement agreement and restrictions agreement recorded June 8, 1994 document 94507671