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Doc#: 0801033038 Fee: \$48.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/10/2008 09:26 AM Pg: 1 of 13

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MORTGAGEE SUBORDINATION AND NONDISTURBANCE AGREEMENT

Box 400-CTCC

After recording, return to:
Blackwell Sanders LLP
Attention: Gaylord G. Smith
4801 Main Street
Kansas City, MO 64112

13/8

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Form of Mortgagee Nondisturbance Agreement

MORTGAGEE SUBORDINATION AND NONDISTURBANCE AGREEMENT

THIS MORTGAGEE SUBORDINATION AND NONDISTURBANCE AGREEMENT (this "Agreement"), is made and entered into as of the date of the last execution hereof, which date is the 26th day of December, 2007, by and among Allianz Life Insurance Company of North America, Inc. ("Lender"), HP Willow LLC ("Landlord"), and Lowe's Home Centers, Inc. ("Tenant") (collectively, Lender, Landlord and Tenant are the "Parties" and individually, a "Party").

WITNESSETH:

WHEREAS, Lender is the holder of a Promissory Note dated December 26, 2007 in the original principal amount of \$50,500,000.00, which is secured, inter alia, by a [Mortgage and Security Agreement or Deed of Trust] (the "Indenture") and a [Collateral Assignment of Leases] (the "Assignment") covering premises more particularly described in the Indenture (the "Premises");

WHEREAS, Landlord has demised to Tenant all or a portion of the Premises, as more particularly set forth in Exhibit A, attached hereto and made a part hereof (the "Demised Premises") by that certain Ground Sublease dated September 22, 2006 (the "Lease"). A Memorandum of Ground Sublease is recorded in the Official Records of Cook County, State of Illinois, as Document No. 0626933160 and

WHEREAS, pursuant to the Lease, Landlord and Tenant contemplated entering into this Agreement and Landlord acknowledges that the terms of the Lease constitute a material inducement to Lender's approving, entering into and performing under this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Subordination of the Lease. The Lease shall be and is hereby made subject to and subordinate to the Indenture, and to all renewals, extensions and modifications of same provided, however, the terms and conditions of the Lease that provide for the application of proceeds of insurance from any casualty loss or proceeds from condemnation, its repair and restoration of the Demised Premises shall control as among all parties to this Mortgagee

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Nondisturbance Agreement and their successors. Without limitation, Lender shall not be bound by the right of first offer provisions of Section 19.2 of the Lease in connection with any foreclosure or deed in lieu thereof or in connection with the subsequent sale by Lender to a third party after a foreclosure or deed in lieu thereof. This subordination shall automatically terminate upon the termination of the Lease as a result of a rejection of the Lease in the Landlord's bankruptcy.

2. Non-Disturbance. As long as Tenant performs its obligations under the Lease and under this Agreement, Lender shall not, in the exercise of any right, remedy or privilege granted by the Indenture, or otherwise available to Lender at law or in equity, disturb Tenant's possession under the Lease and the Lease will not be affected or cut off thereby; nor shall any deed or assignment or new lease given in lieu of foreclosure or sale under the Indenture disturb Tenant's possession under the Lease and the Lease will not be affected or cut off thereby.

3. Attornment. Tenant shall attorn to any person or entity that acquires the Demised Premises pursuant to foreclosure of the Indenture, or to any grantee or transferee designated in any deed given by Landlord in lieu of such foreclosure.

Upon any attornment under this Paragraph 3, successor landlord and Tenant shall have the same rights on a prospective basis that can be enforced against each other as Landlord and Tenant have under the Lease, but successor landlord shall not (a) be liable for the performance of any cure for prior Landlord defaults or (b) have any obligation with respect to any security deposited under the Lease unless such security has been physically delivered to Lender, or (c) be bound by any prior modification of the Lease not consented to by Lender or by any prior prepayment of rent for a period greater than thirty (30) days. Notwithstanding the above, Tenant shall have the right to set off against rental due any obligations of Landlord or successor landlord as stated in the Lease.

As of the date of this Agreement, Tenant, to the best of its knowledge, does not have any claim against Landlord.

In the event that the construction of the Demised Premises has not been substantially completed at the time the Lender or any third party succeeds to the interest of the Landlord under the Lease by reason of foreclosure or other proceedings brought by the Lender or by any transfer in lieu of foreclosure, then, in such event, Tenant hereby agrees that the Lender or any such third party shall have the right to cancel and terminate the Lease upon delivery of

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written notice to Tenant and the expiration of a thirty (30) day period within which Tenant may elect to exercise its completion rights as set forth in the Lease. If Tenant elects to complete under the Lease, Lender shall have no right to cancel or terminate the Lease.

Any provision of this Agreement to the contrary notwithstanding, the Lender shall have no obligation, or incur any liability, with respect to the erection and completion of the building in which the Demised Premises are located or for the completion of the Demised Premises or any improvements for Tenant's use and occupancy.

4. Rents. Landlord and Tenant jointly and severally acknowledge that the Indenture or the Assignment provide for the direct payment to Lender of all rents and other monies due and to become due to Landlord under the Lease upon the occurrence of certain conditions as set forth in the Indenture or the Assignment without Lender's taking possession of the Demised Premises or otherwise assuming Landlord's position or any of Landlord's obligations under the Lease. Upon Tenant's receipt from Lender of written notice to pay all such rents and other monies to or at the direction of Lender, Landlord authorizes and directs Tenant thereafter to make all such payments to or at the direction of Lender, releases Tenant of any and all liability to Landlord for any and all payment so made, and shall defend, indemnify and hold Tenant harmless from and against any and all claims, demands, losses, or liabilities asserted by, through or under Landlord for any and all payments so made. Upon receipt of such notice and subject to any and all rights of Tenant under the Lease or at law or in equity, including, but not limited to the right to offset or withhold rent under the Lease, Tenant thereafter shall pay all monies then due and becoming due from Tenant under the Lease to or at the direction of Lender. Tenant agrees that neither Landlord's demanding or receiving any such payments, nor Lender's exercising any other right, remedy, privilege, power of immunity granted by the Indenture or the Assignment, will operate to impose any liability upon Lender for performance of any obligation of Landlord under the Lease unless and until Lender elects otherwise in writing or acquires the Demised Premises through foreclosure of the Indenture or by deed from Landlord in lieu of foreclosure. Such payments shall continue until Lender directs Tenant otherwise in writing.

Tenant agrees not to pay any rent under the Lease more than thirty (30) days in advance without Lender's consent. The provisions of this Paragraph 4 will apply from time to time throughout the terms of the Lease.

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5. Cure. At the time Tenant notifies Landlord of any default by Landlord, which, if not cured, would entitle Tenant to terminate the Lease or to an abatement of rent or to offset or withhold rent, Tenant shall give Lender a copy of such notice and as a condition precedent to terminating the Lease or an abatement of rent or offsetting or withholding rent, and Lender's right to cure the specified default shall be twenty (20) working days after Lender receives notice, or five (5) business days more than Landlord has to cure, whichever is longer; provided, however, that if the act, omission or other default cannot with due diligence be remedied within such period, the Lender shall have a reasonable time within which to remedy same provided the Lender commences to remedy same within such time period and diligently and continuously pursue the remedy thereof. Lender has the right to cure any such default but is not obligated to specifically perform any such cure in which case Tenant shall have all of its remedies available.

6. Amendment. Landlord and Tenant, jointly and severally agree that they will not amend or modify the Lease, or waive the benefit of any of its provisions, or in any way terminate or surrender the Lease except as expressly provided in the Lease, or this Agreement, or both, without Lender's prior written approval, which will not be unreasonably withheld or delayed so long as no such proposed action of Landlord and Tenant will adversely affect the security intended to be provided by the Indenture and the Assignment.

All amendments, modifications, substitutions, renewals, extensions, and replacements of the Lease shall be and remain subordinated as provided in Paragraph 1 and in accordance with the other terms and conditions of this Agreement, without the necessity of any further act of the Party.

7. Estoppel Letters. Wherever reasonably requested by Lender, Landlord and Tenant from time to time shall severally execute and deliver to or at the direction of Lender, and without charge to Lender, one (1) or more written certifications of all of the matters set forth in Exhibit G to the Lease, and as to Tenant's occupancy of the Demised Premises, whether Tenant has exercised any renewal options and a confirmation that the Lease is and remains subordinated as provided in this Agreement.

8. Notices. All notices, demands and other communications that must or may be given or made in connection with this Agreement must be in writing and, unless receipt is expressly required, will be deemed delivered or made three (3) days after the date when mailed

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by registered or certified mail, return receipt requested, in any event with sufficient postage affixed, or one (1) day after the date when sent by nationally recognized overnight courier, , and addressed to the Party as follows:

To Lender: Allianz Life Insurance Company of North America, Inc.
~~55 Greens Farms Road~~ ~~Westport, CT 06881~~ **To ALLIANZ OF AMERICA, INC.**
55 GREENS FARMS ROAD
PO BOX 5160
WESTPORT, CT 06881-5160

To Landlord: Same as set forth in the Lease **ATTN: REAL ESTATE DEPT.**

To Tenant: Same as set forth in the Lease

Such addresses may be changed by notice pursuant to this Paragraph 8; but notice of change of address is effective only upon receipt. Landlord and Tenant each agrees that it will furnish Lender with copies of all notices relating to the Lease that it delivers to the other.

9. Successors and Assigns. This Agreement shall bind and inure to the benefit of Landlord, Tenant and Lender, their legal representatives, successors and assigns.

10. Further Assurances. Landlord and Tenant from time to time shall execute and deliver at Lender's request all instruments that may be reasonably necessary or appropriate to evidence their agreements hereunder.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

“LENDER”:

Allianz Life Insurance Company of North America, Inc.

a _____

By:

Name:

Title:

“LANDLORD”:

HP Willow LLC

an Illinois limited liability company

By: 

Name: TODD BERLINGHOFF

Title: managing member

“TENANT”:

LOWE'S HOME CENTERS, INC.,

a North Carolina corporation

ATTEST:

By: 

Jeffrey E. Gray
Assistant Secretary

By: 

Name:

Title:

W. Layne Adams, Jr.
Vice President

CLM
SL

Property of Cook County Clerk's Office

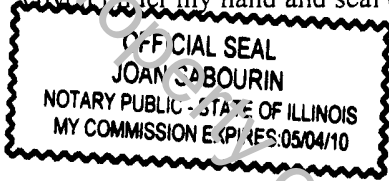
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STATE OF ILLINOIS)
) ss.
COUNTY OF DU PAGE)

Before me, the undersigned, a Notary Public in and for said State, personally appeared Todd Berlinghof, known to me and known by me to be the Managing Member of HP Willow LLC, an Illinois and acknowledged the execution of the foregoing Subordination, Attornment and Nondisturbance Agreement for and on behalf of said LLC.

limited
liability
company

Given under my hand and seal of office this 11th day of December, 2007.



Joan Sabourin
Notary Public

My commission expires: 05/04/10

Notary's Name (printed):
JOAN SABOURIN

STATE OF _____)
) ss.
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to me and known by me to be the _____ of _____, a _____ and acknowledged the execution of the foregoing Subordination, Attornment and Nondisturbance Agreement for and on behalf of said _____.

Given under my hand and seal of office this _____ day of _____, 200_____.

Notary Public

My commission expires:

Notary's Name (printed):

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STATE OF North Carolina)
)
) ss.
 COUNTY OF Wilkes)

Before me, the undersigned, a Notary Public in and for said State, personally appeared W. Layne Adams, Jr., known to me and known by me to be the Vice President Officer of Lowe's Home Centers, Inc., a NC Corporation and acknowledged the execution of the foregoing Subordination, Attornment and Nondisturbance Agreement for and on behalf of said Corporation.

Given under my hand and seal of office this 21st day of December, 2007.

Sherry Luckey
 Notary Public

My commission expires:

1/25/10

Notary's Name (printed):

Sherry Luckey

SHERRY LUCKEY
 Notary Public, North Carolina
 Wilkes County
 My Commission Expires
 January 25, 2010

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IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

“LENDER”:


Allianz Life Insurance Company of North America, Inc.

a _____

THEODORE L. SULLIVAN
ASSISTANT TREASURER


ECF  _____

By:
Name:
Title:

ECF  _____
WENDEL R. KURTZ
ASSISTANT TREASURER

“LANDLORD”:

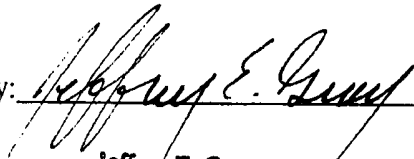
HP Willow LLC
an Illinois limited liability company

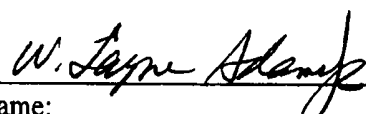
By:  _____

Name: TODD BERLINGER
Title: Managing Member

“TENANT”:
LOWE’S HOME CENTERS, INC.,
a North Carolina corporation

ATTEST:

By:  _____
Jeffrey E. Gray
Assistant Secretary

By:  _____
Name: W. Layne Adams, Jr.
Title: Vice President

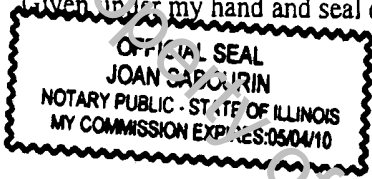
PROPERTY OF COOK COUNTY CLERK'S OFFICE

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STATE OF ILLINOIS)
)
COUNTY OF DU PAGE) ss.

Before me, the undersigned, a Notary Public in and for said State, personally appeared Todd Berlinghof, known to me and known by me to be the Managing Member of HP Willow LLC, an Illinois and acknowledged the execution of the foregoing Subordination, Attornment and Nondisturbance Agreement for and on behalf of said LLC. limited liability company

Given under my hand and seal of office this 11th day of December, 2007.



Joan Sabourin
Notary Public

My commission expires: 05/04/10 Notary's Name (printed): JOAN SABOURIN

STATE OF Connecticut)
)
COUNTY OF Fairfield) ss.

Before me, the undersigned, a Notary Public in and for said State, personally appeared Ted Sullivan, Wendell Ruffo, known to me and known by me to be the Asst. Treasurers of Allianz Life Ins. Co. of North Amer., a Trins. Corp. and acknowledged the execution of the foregoing Subordination, Attornment and Nondisturbance Agreement for and on behalf of said corporation.

Given under my hand and seal of office this 31st day of Dec., 2007.

Ruth O. Guglielmoni
Notary Public

My commission expires: _____ Notary's Name (printed): **RUTH O. GUGLIELMONI
STATE OF CONNECTICUT
NOTARY PUBLIC
MY COMMISSION EXPIRES JULY 31, 2011**

UNOFFICIAL COPY**EXHIBIT A****Legal Description of the Demised Premises****TRACT 4**

7 THAT PART OF LOT SE-1A IN THE FINAL PLAT OF SUBDIVISION OF TECHNY
 8 PARCEL SE-1, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF
 9 SECTION 14, AND PART OF THE NORTHWEST QUARTER OF SECTION 23, AND PART
 10 OF THE NORTHEAST QUARTER OF SECTION 23, ALL IN TOWNSHIP 42 NORTH,
 11 RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT
 12 THEREOF RECORDED DECEMBER 22, 2000 AS DOCUMENT NUMBER 01007540,
 13 DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST SOUTHERLY SOUTHWEST
 14 CORNER OF LOT SE-1A; THENCE NORTHERLY ALONG THE WEST LINE OF SAID
 15 LOT SE-1A THE FOLLOWING FIVE (5) COURSES AND DISTANCES: 1) NORTH 45
 16 DEGREES 00 MINUTES 00 SECONDS WEST 63.37 FEET; 2) NORTH 01 DEGREES 18
 17 MINUTES 06 SECONDS EAST 436.45 FEET TO A POINT OF CURVATURE; 3) ALONG
 18 AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 1000.00 FEET,
 19 HAVING A CHORD BEARING OF NORTH 08 DEGREES 53 MINUTES 18 SECONDS
 20 EAST, 264.83 FEET TO A POINT OF REVERSE CURVATURE; 4) ALONG AN ARC OF A
 21 CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 1100.00 FEET, HAVING A
 22 CHORD BEARING OF NORTH 08 DEGREES 53 MINUTES 18 SECONDS EAST, 291.31
 23 FEET TO A POINT OF TANGENCY; 5) NORTH 01 DEGREES 18 MINUTES 05 SECONDS
 24 EAST 187.29 FEET; THENCE SOUTH 88 DEGREES 44 MINUTES 41 SECONDS EAST,
 25 23.49 FEET FOR THE PLACE OF BEGINNING, THENCE CONTINUING SOUTH 88
 26 DEGREES 44 MINUTES 41 SECONDS EAST, 838.07 FEET; THENCE SOUTH 01
 27 DEGREES 18 MINUTES 42 SECONDS WEST, 119.58 FEET; THENCE NORTH 88
 28 DEGREES 41 MINUTES 18 SECONDS WEST, 86.13 FEET; THENCE SOUTH 01 DEGREES
 29 18 MINUTES 42 SECONDS WEST, 210.26 FEET TO A POINT OF CURVATURE; THENCE
 30 SOUTHERLY ALONG AN ARC OF A CURVE CONCAVE TO THE EAST, HAVING A
 31 RADIUS OF 100.00 FEET, HAVING A CHORD BEARING OF SOUTH 16 DEGREES 54
 32 MINUTES 52 SECONDS EAST, 63.62 FEET TO A POINT OF TANGENCY; THENCE
 33 SOUTH 35 DEGREES 08 MINUTES 25 SECONDS EAST, 16.68 FEET TO A
 34 NONTANGENT CURVE; THENCE SOUTHERLY ALONG AN ARC OF A CURVE
 35 CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 331.00 FEET, HAVING A
 36 CHORD BEARING OF SOUTH 28 DEGREES 39 MINUTES 23 SECONDS WEST, 328.26
 37 FEET A NONTANGENT LINE; THENCE NORTH 88 DEGREES 41 MINUTES 18
 38 SECONDS WEST, 329.16 FEET TO A POINT OF CURVATURE; THENCE WESTERLY
 39 ALONG AN ARC OF A CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF
 40 100.00 FEET, HAVING A CHORD BEARING OF NORTH 72 DEGREES 37 MINUTES 10
 41 SECONDS WEST, 56.09 FEET TO A NONTANGENT LINE; THENCE NORTH 55
 42 DEGREES 10 MINUTES 45 SECONDS WEST, 83.58 FEET; THENCE NORTH 56 DEGREES
 43 33 MINUTES 01 SECONDS WEST, 122.12 FEET TO A POINT OF CURVATURE; THENCE
 44 NORTHWESTERLY ALONG AN ARC OF A CURVE CONCAVE TO THE NORTHEAST,
 45 HAVING A RADIUS OF 100.00 FEET, HAVING A CHORD BEARING OF NORTH 49

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1 DEGREES 14 MINUTES 21 SECONDS WEST, 25.52 FEET TO A POINT OF REVERSE
 2 CURVATURE; THENCE NORTHWESTERLY ALONG AN ARC OF A CURVE CONCAVE
 3 TO THE SOUTHWEST, HAVING A RADIUS OF 147.00 FEET, HAVING A CHORD
 4 BEARING OF NORTH 44 DEGREES 53 MINUTES 05 SECONDS WEST, 15.17 FEET TO A
 5 NONTANGENT LINE; THENCE NORTH 01 DEGREES 18 MINUTES 42 SECONDS EAST,
 6 140.74 FEET; THENCE NORTH 07 DEGREES 11 MINUTES 35 SECONDS EAST, 58.62
 7 FEET; THENCE NORTH 01 DEGREES 17 MINUTES 08 SECONDS EAST, 197.56 FEET TO
 8 A NONTANGENT CURVE; THENCE NORTHERLY ALONG THE ARC OF A CURVE
 9 CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 30.00 FEET, HAVING A
 10 CHORD BEARING OF NORTH 37 DEGREES 45 MINUTES 22 SECONDS WEST, 32.77
 11 FEET TO A POINT OF REVERSE CURVATURE; THENCE NORTHERLY ALONG AN
 12 ARC OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 55.50
 13 FEET, HAVING A CHORD BEARING OF NORTH 34 DEGREES 23 MINUTES 19
 14 SECONDS WEST, 67.15 FEET TO A NONTANGENT LINE; THENCE NORTH 01
 15 DEGREES 15 MINUTES 19 SECONDS EAST, 56.45 FEET TO THE PLACE OF
 16 BEGINNING, IN COOK COUNTY, ILLINOIS.

PIN numbers

04-23-10A-001-0000

04-21-200-041-0000