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Doc#: 1025218029 Fee: \$58.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/09/2010 01:07 PM Pg: 1 of 12

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**PINs:**

- 03-27-401-040-0000
- 03-27-401-261-0000
- 03-27-401-264-0000
- 03-27-401-265-0000
- 03-27-401-267-0000
- 03-27-401-268-0000
- 03-27-401-269-0000
- 03-27-401-270-0000
- 03-27-401-271-0000

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, dated the 14<sup>th</sup> day of July, 2010, by and between **BANK OF AMERICA, N.A.**, a national banking association, in its capacity as Administrative Agent under the Credit Agreement referenced below and for the benefit of the Secured Parties, as such term is defined in the Credit Agreement ("Mortgagee"), **RANDHURST SHOPPING CENTER LLC**, a Delaware limited liability company, whose address is c/o Casto Lifestyle Properties, 401 Cattlemen Road, Suite 108, Sarasota, FL 34232 ("Landlord"), and **HOME DEPOT U.S.A., INC.**, a Delaware corporation ("Tenant").

### WITNESSETH:

WHEREAS, Landlord and Tenant have entered into a Shopping Center Lease dated January 27, 2010 (as amended, the "Lease") pertaining to certain premises (the "Premises") at Randhurst Village (the "Shopping Center"); and

WHEREAS, Mortgagee is the Administrative Agent for the Secured Parties referenced in that certain Construction Loan Agreement dated as of July 14, 2010 among the Landlord, the Lenders party thereto and the Mortgagee (as the same may have been from time to time amended, restated, supplemented or otherwise modified, the "Credit Agreement");

WHEREAS, Mortgagee has made or agreed to make a loan secured by, among other things, a lien (the "Mortgage") upon the real property described in Exhibit A attached hereto (which includes the Premises); and

WHEREAS, Tenant wishes to be assured of the continued use and occupancy of the Premises and related Common Area (as such terms are defined in the Lease) and such signage of the Shopping Center under the terms of the Lease, notwithstanding any breach or default by Landlord or the exercise of any remedies under the Mortgage; and

WHEREAS, Mortgagee wishes for Tenant to recognize and attorn to Mortgagee in the event that Mortgagee succeeds to the rights of Landlord under the Lease as a result of foreclosure or otherwise.

NOW, THEREFORE, in consideration of the foregoing, and for valuable consideration, the receipt and sufficiency of which upon full execution hereof are hereby acknowledged, and the mutual undertakings hereinafter set forth, the parties hereby covenant and agree as follows:

1. **SUBORDINATION.** As set forth in this Agreement, the Lease is and shall be subject and subordinate to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage, to the full extent of amounts secured thereby and interest thereon. The foregoing notwithstanding, in no event shall any of Tenant's trade fixtures, inventory, equipment, furniture and furnishings, accounts, books or records or other assets be or become subject or subordinate to the lien in favor of Mortgagee.

2. **NON-DISTURBANCE.** So long as the Lease has not been terminated as a result of a default by Tenant beyond any applicable grace, notice and cure period, Tenant's possession,

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use and enjoyment of the Premises and the related Common Area, including but not limited to related signage, shall not be interfered with, disturbed or diminished, or otherwise affected in any manner as a result of any act or omission of Landlord, and all rights and privileges of Tenant under the Lease, and any renewals, modifications, or extensions thereof, shall be recognized by Mortgagee and any Successor Landlord (as defined in paragraph 3 below). If any action or proceeding is commenced by Mortgagee for the foreclosure of the Mortgage or the sale of the Premises, Tenant shall not be named as a party therein unless such joinder shall be required by law and Tenant shall not thereby be subjected or exposed to any liability, cost or expense, and such joinder shall not result in the termination of the Lease or disturb Tenant's possession, use or enjoyment of the Premises, and the foreclosure or sale in any such action or proceeding shall be made subject to all rights of Tenant under the Lease. Compliance by Landlord with any of the terms or provisions of the Lease shall not constitute a breach of or a default under or with respect to the Mortgage or any obligation secured thereby.

3. **ATTORNEYMENT.** In the event that title to, possession of or control of the Premises or any other interest therein, which includes the right to receive payment of rent or to enforce the performance of other obligations under the Lease, is transferred as a result of any trustee's sale, judicial foreclosure, deed in lieu of foreclosure or other proceedings pursuant to the Mortgage, Tenant will attorn to the purchaser or transferee who acquires such title or other interest ("Successor Landlord") and will recognize such Successor Landlord as landlord under and subject to the terms and conditions of the Lease. Tenant hereby waives the provisions of any statute or rule of law now or hereafter in effect which might give it any right or election to terminate the Lease by reason of any such foreclosure proceeding.

4. **PERFORMANCE BY TENANT.** In the event that Tenant receives any notice from Mortgagee or any Successor Landlord to pay rent or other sums or render any other performance under the Lease to such Mortgagee or Successor Landlord, Tenant may render performance in accordance with such notice without any duty of inquiry and despite any knowledge or notice to the contrary with the same force and effect as if such payment or performance were rendered to Landlord, and Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment of such rent to Mortgagee or any Successor Landlord in accordance with this Agreement or Mortgagee's or any Successor Landlord's notice or instructions from Mortgagee or any Successor Landlord.

5. **SUCCESSOR LANDLORD LIABILITY.** Upon transfer of the Premises to the Successor Landlord, including Mortgagee, the Successor Landlord shall have the same rights and obligations under the Lease as the Landlord and Tenant shall have the same rights and remedies under the Lease against the Successor Landlord as existed against Landlord, including for a breach of the Lease; provided, however, that Mortgagee or any Successor Landlord shall not:

(a) be liable for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to Successor Landlord's actual ownership of the Property; or

(b) be subject to any offsets which Tenant might have against any prior landlord (including Landlord), except for offsets arising under the Lease with respect to costs

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and expenses (but not damages) incurred by Tenant after Tenant has notified Mortgagee and given Mortgagee an opportunity to cure as provided in this Agreement; or

(b) be bound by any Base Rent which Tenant might have paid for more than one (1) month in advance; or

(c) be obligated to reimburse Tenant for any security deposit, unless said security deposit is received by Mortgagee; or

(d) be bound by any amendment or modification of the Lease made after the date hereof without Mortgagee's consent, and it being agreed by Mortgagee that consent shall be deemed given unless Mortgagee makes objection in writing and properly noticed to Tenant within thirty (30) days from the date of Tenant's notice to Mortgagee.

Provided however, that nothing herein shall excuse Mortgagee or any Successor Landlord from liability or responsibility for, or limit any right or remedy of Tenant with respect to, any breach or default which continues from and after the date when Mortgagee or such Successor Landlord obtains title to or takes possession or control of the Premises.

6. Tenant acknowledges and agrees that:

(a) Notwithstanding anything to the contrary in the Lease or the Loan Documents (as defined in the Credit Agreement), neither Mortgagee nor any Successor Landlord shall be liable for or bound by any Construction-Related Obligation under the Lease. As used herein, a "Construction-Related Obligation" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at the Property, including the Premises.

(b) In the event that Mortgagee or any Successor Landlord shall acquire title to the Premises or the Property, Mortgagee or such Successor Landlord shall have no obligation, nor incur any liability, beyond Mortgagee's or Successor Landlord's then equity interest, if any, in the Property or the Premises, and Tenant shall look exclusively to such equity interest of Mortgagee or Successor Landlord, if any, for the payment and discharge of any obligations imposed upon Mortgagee or Successor Landlord hereunder or under the Lease or for recovery of any judgment from Mortgagee, or Successor Landlord, and in no event shall Mortgagee, Successor Landlord, nor any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for such judgment.

7. NOTICE OF LANDLORD DEFAULT. Each of the Mortgagee and Tenant shall give to the other, by certified or registered mail, a copy of any notice of default served upon Landlord under the Mortgage or the Lease, respectively, at the address set forth above, and the other shall have the same right, but shall have no obligation, to cure any such default on behalf of Landlord as is provided in the Mortgage or the Lease, respectively.

8. LEASE TERMINATION. In the event Tenant notifies Mortgagee that Tenant elects to terminate the Lease as a result of Landlord's default, the Lease shall not terminate until Mortgagee has had a reasonable period of time after such notice in which to cure said default, not to exceed thirty (30) days ("Initial Cure Period"), which period may run concurrently with any

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notice or cure period given to Landlord; provided, however, that if due to the nature of the default Mortgagee is unable to complete such cure within the Initial Cure Period, Mortgagee shall be entitled to such additional time as may be necessary to cure such default, not to exceed thirty (30) days following the expiration of the Initial Cure Period, only if and so long as the following conditions are satisfied: (i) Mortgagee has notified Tenant in writing of its intent to cure Landlord's default; (ii) Mortgagee has commenced such cure within the Initial Cure Period; and (iii) Mortgagee diligently pursues such cure to completion.

9. OTHER DOCUMENTS. Each of Mortgagee, Landlord and Tenant agrees to reasonably execute and deliver to the others such further documents and assurances confirming the foregoing as any of such parties may reasonably request.

10. SUCCESSORS AND ASSIGNS. The terms "Mortgagee", "Successor Landlord" and "Landlord" shall include such parties and any successors or assigns, including any successors in title to the Premises. The term "Tenant" shall include any assignee or sublessee.

11. CONDITION. The parties agree that this Agreement shall be valid only once fully executed, acknowledged and delivered by all of the parties hereto.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first referenced above.

**MORTGAGEE:**

**BANK OF AMERICA, N.A.,**  
a national banking association

By: *Theodore Beccia*  
Name: Theodore Beccia  
Title: Vice President

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**LANDLORD:**

**RANDHURST SHOPPING CENTER LLC,**  
a Delaware limited liability company

By: CLP/SPF Randhurst Trust,  
a Maryland real estate investment trust  
its sole member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

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

By: *Marybeth Lamoree*  
Name: Marybeth Lamoree  
Title: Sr. Manager - Property Management *lw*

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first referenced above.

MORTGAGEE:

**BANK OF AMERICA, N.A.,**  
a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LANDLORD:

**RANDHURST SHOPPING CENTER LLC,**  
a Delaware limited liability company

By: CLP/SPF Randhurst Trust,  
a Maryland real estate investment trust  
its sole member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

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

By: Marybeth Lamoree  
Name: Marybeth Lamoree  
Title: SR. Manager - Property Management

*lw*

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first referenced above.

**MORTGAGEE:**

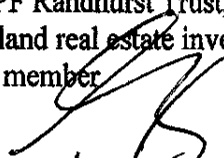
**BANK OF AMERICA, N.A.,**  
a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD:**

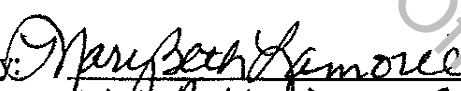
**RANDHURST SHOPPING CENTER LLC,**  
a Delaware limited liability company

By: CLP/SPF Randhurst Trust,  
a Maryland real estate investment trust  
its sole member

By:   
Name: Mark Spang  
Title: Vice President

**TENANT:**

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

By:   
Name: Mary Beth Lomore  
Title: Sr. Manager - Property Management

*lw*

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## ACKNOWLEDGEMENTS

STATE OF IL )  
 ) ss.  
COUNTY OF COOK )

On this 9<sup>th</sup> day of July, 2010, before me, the undersigned officer, personally appeared Theodore Becchetti, who acknowledged himself to be the Vice President of BANK OF AMERICA, N.A., a national banking association, and that he, as such \_\_\_\_\_ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing such instrument in such capacity.

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

Tina Noel  
Notary Public

My Commission Expires:

June 17, 2013



STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be a Trustee of CLP/SPF Randhurst Trust, a Maryland real estate investment trust, sole member of RANDHURST SHOPPING CENTER LLC, a Delaware limited liability company, and that he, as such Trustee being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing such instrument in such capacity.

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

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

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## ACKNOWLEDGEMENTS

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of **BANK OF AMERICA, N.A.**, a national banking association, and that he, as such \_\_\_\_\_ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing such instrument in such capacity.

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

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

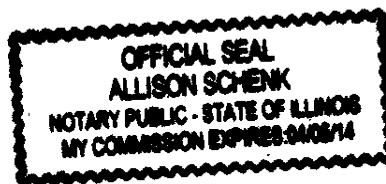
On this 8th day of JULY, 2010, before me, the undersigned officer, personally appeared MIONK IBANEZ, who acknowledged himself to be a Trustee of CLP/SPF Randhurst Trust, a Maryland real estate investment trust, sole member of **RANDHURST SHOPPING CENTER LLC**, a Delaware limited liability company, and that he, as such Trustee being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing such instrument in such capacity.

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

Allison Schenk  
Notary Public

My Commission Expires:

4/5/2014



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STATE OF Georgia )  
 ) ss.  
COUNTY OF Cobb )

The foregoing instrument was acknowledged before me this 30th day of June, 2010, by Mary Beth Lomax as St. Manager - Property Manager of HOME DEPOT U.S.A., INC., a Delaware corporation, on behalf of the Tenant.

Bibi Rooplall  
Notary Public

My Commission Expires:

10-16-2011



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## Exhibit A

### Description of the Property

PARCEL 1: LOTS 1 AND 2 (EXCEPTING FROM SAID LOT ONE THAT PART TAKEN BY DEPARTMENT OF TRANSPORTATION STATE OF ILLINOIS IN CASE NO. 87L51078 AND ALSO EXCEPTING FROM SAID LOT ONE THAT PART CONVEYED TO THE PEOPLE OF THE STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION PURSUANT TO THAT CERTAIN QUIT CLAIM DEED RECORDED SEPTEMBER 29, 1995 AS DOCUMENT NO. 95664230) IN RANDHURST CENTER RESUBDIVISION - NO. 1, BEING A RESUBDIVISION OF LOT ONE IN RANDHURST CENTER, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT OF SAID RANDHURST CENTER RESUBDIVISION - NO. 1 RECORDED JULY 24, 1987 IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS AS DOCUMENT NO. 87408581 AND REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF SAID COUNTY AS DOCUMENT NO. LR 637429.

PARCEL 2: NORTH 70 FEET OF THE WEST 70 FEET OF THE SOUTH 120 FEET OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS