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Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/31/2012 10:40 AM Pg: 1 of 8

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Prepared By and Mail To:

Michael J. Hurley, Jr., Esq.  
CASSIN & CASSIN LLP  
711 Third Avenue, 20<sup>th</sup> Floor  
New York, NY 10017

Box 400-CTCC

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

THIS AGREEMENT made as of this 17 day of May, 2012, by and between CIBX COMMERCIAL MORTGAGE, LLC, a Delaware limited liability company ("Lender") and KOHL'S ILLINOIS, INC. a Nevada corporation ("Subtenant").

### RECITALS:

A. Subtenant has entered into a certain Sublease (the "Sublease") dated February 13, 2003 for certain premises located in the City of Chicago, Cook County, Illinois, and legally described in Exhibit A attached hereto and made a part hereof (the "Premises").

B. Lender is the beneficiary under a Mortgage, Assignment of Leases and Rents and Security Agreement (the "Security Instrument"), between Elston Development I L.L.C., a Delaware limited liability company, as successor-in-interest to Elston Development L.L.C. a Delaware limited liability company ("Sublandlord") and Lender, dated May 17, 2012 and recorded with the Cook County, Illinois Recorder encumbering the Premises and a specific Assignment of Leases and Rents dated May 17, 2012 and to be recorded with the Cook County, Illinois Recorder (the "Assignment") assigning the Sublease. Both the Security Instrument and the Assignment secure a loan or loans from Lender to Sublandlord.

C. Each party hereto has requested the other party to enter into this Agreement.

### AGREEMENTS:

NOW, THEREFORE, in consideration of the above Recitals and the agreements of the parties set forth below, and for One Dollar (\$1.00) and other good and valuable consideration, the parties hereto agree as follows:

1. The Lease and each and every term and condition thereof, and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of Subtenant in and to the Premises are and shall be subject and subordinate to the lien of the Security Instrument, all advances made or to be made thereunder, and to any renewals, modifications, supplements, replacements, consolidations, increases and extensions thereof.

2. Lender agrees that in the event of foreclosure of the Security Instrument, or other enforcement of the terms and conditions of the Security Instrument or the exercise by Lender of its rights under the Assignment, or if Lender comes into possession or acquires title to the Premises as a result of foreclosure or the threat thereof, or as a result of any other means, such action shall not result in either a termination of the Lease or a diminution or impairment of any of the rights granted to Subtenant in the

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6 of 8

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Lease or in an increase in any of Subtenant's obligations under the Lease, including but not limited to provisions in the Lease dealing with condemnation, fire and other casualties.

3. Subtenant agrees with Lender that if the interest of Sublandlord in the Premises shall be transferred to Lender by reason of foreclosure or other proceedings, or by any other manner, or in the event of a foreclosure sale of the Premises to any other person, firm, or corporation, then in any of said events, Subtenant shall be bound to Lender or such purchaser, grantee or other successor to Sublandlord's interest ("Successor Sublandlord") under all of the terms, covenants and conditions of the Lease for the balance of the term remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if the Successor Sublandlord were the sublandlord under the Lease. Subtenant does hereby agree to attorn to the Successor Sublandlord.

4. At such time that Successor Sublandlord succeeds to the interest of Sublandlord under the Lease, Successor Sublandlord shall be bound to Subtenant under all of the terms, covenants and conditions of the Lease for the balance of the term remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease; provided, however, Subtenant agrees that a Successor Sublandlord shall not be:

- (a) personally liable for any act or omission of any prior landlord under the Lease;
- (b) bound by any base rent or additional rent which Subtenant may have paid for more than the current or next succeeding month to any prior landlord; or
- (c) obligated to perform any work in the Premises or any part thereof, other than such work which is required to be performed by Sublandlord under the Lease.

5. Subtenant will notify Lender of any default of Sublandlord under the Lease which Subtenant believes would entitle it to cancel the Lease or abate the base rent or additional rent payable thereunder, and agrees that no notice of cancellation thereof nor any such rent abatement shall be effective against Lender unless Lender has received the notice aforesaid and has failed to cure the default within the longer of thirty (30) days after such notice or such period of time following such notice as Sublandlord has to cure the default which gives rise to such alleged right of cancellation or abatement ("Lender Cure Period"). All such notices shall be in writing and shall be deemed to have been given when delivered personally, when deposited in the United States mail, certified or registered, postage prepaid, or when delivered by Federal Express or similar overnight delivery service, addressed as follows:

To Lender: CIBX Commercial Mortgage, LLC  
425 Lexington Avenue, 4<sup>th</sup> Floor  
New York, NY 10017

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With a copy to: SBAF Mortgage Fund I/Lender, LLC  
c/o Principal Real Estate Investors, LLC  
711 High Street  
Des Moines, IA 50392-0301

6. Provided Sublandlord has irrevocably and unconditionally directed Subtenant to comply with such demand, Subtenant shall, upon Lender's demand therefor, thereafter pay directly to Lender all amounts thereafter payable by Subtenant to Sublandlord under the Lease.

7. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein, the term "Subtenant" shall include Subtenant, its successors and assigns as permitted under the Lease; the words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Sublandlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure, and the word "Lender" shall include the Lender specifically named herein and any of its successors and assigns, including any Successor Sublandlord.

**[SIGNATURES ON FOLLOWING PAGE(S)]**

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**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the day and year first above written.

**CIBX COMMERCIAL MORTGAGE, LLC**, a  
Delaware limited liability company

By: **CIBC INC.**, a  
Delaware corporation, a  
Member

By:   
Name: Todd Roth  
Title: Managing Director

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STATE OF NEW YORK     )  
  : ss.:  
COUNTY OF NEW YORK    )

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared **TODD ROTH**, in his capacity as the **MANAGING DIRECTOR** of **CIBC INC.**, a Delaware corporation, the General Partner of **CIBX COMMERCIAL MORTGAGE, LLC**, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and, being by me first duly sworn, declared and acknowledged to me under oath that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated, as the act and deed of said corporation, on behalf of the corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27 day of April, 2012.

Mel J. Polak

Notary Public in and for New York  
County, State of New York

**NILDA L. POLAK**  
Notary Public, State of New York  
01PO6139097  
Qualified in Nassau County  
Certified in New York County  
Commission Expires Dec. 19, 2013

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the month, day and year first above written.

**SUBTENANT:**

**KOHL'S ILLINOIS, INC.**, a Nevada corporation, wholly owned by **KOHL'S DEPARTMENT STORES, INC.**, a Delaware corporation

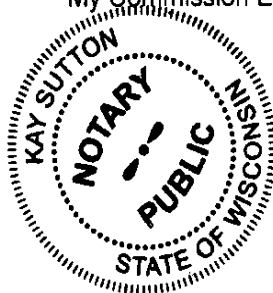
By: Sarah J. Ryan  
Sarah J. Ryan  
Director, Property Development Law

STATE OF WISCONSIN     )  
  ) SS  
COUNTY OF WAUKESHA    )

Personally came before me this 24<sup>th</sup> day of April, 2012, the above-named Sarah J. Ryan, to me known to be the Director, Property Development Law of Kohl's Department Stores, Inc., a Delaware corporation, which wholly owns Kohl's Illinois, Inc., a Nevada corporation, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Kay Sutton  
Notary Public

My Commission Expires: July 27, 2014



This instrument was drafted by  
and after recording should be returned to:

Sarah J. Ryan  
Kohl's Department Stores, Inc.  
N56 W17000 Ridgewood Drive  
Menomonee Falls, Wisconsin 53051

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## EXHIBIT A

### LEGAL DESCRIPTION OF PREMISES

#### Exhibit D

That part of various lots; vacated streets and alleys; in various subdivisions in the East Half of the Northeast Quarter of Section 31, Township 40 North, Range 14, East of the Third Principal Meridian, described as follows:

Commencing at the intersection of the South line of West Webster Avenue with the Southwesterly line of North Elston Avenue; Thence South  $44^{\circ} 59' 59''$  East along said Southwesterly line 204.88 feet to the point of beginning; Thence continue South  $44^{\circ} 59' 59''$  East along said Southwesterly line 714.37 feet; Thence South  $45^{\circ} 03' 01''$  West 316.20 feet to the Northeasterly line of the Chicago & Northwestern Railroad right of way; Thence North  $50^{\circ} 35' 39''$  West along said Northeasterly line 695.54 feet to the East line of North Wood Street; Thence North  $00^{\circ} 54' 22''$  East along said East line 75.0 feet to a point 358.29 feet (as measured on said East line) South of the South line of West Webster Avenue; Thence South  $89^{\circ} 05' 38''$  East 42.21 feet; Thence North  $45^{\circ} 00' 01''$  East 300.76 feet to the point of beginning, in Cook County, Illinois.

#### LESS:

That part of Lot "A" in the consolidation of parts of Original Block 21 in Sheffield's Addition to Chicago in Section 31, Township 40 North, Range 14, East of the Third Principal Meridian, described as follows: Commencing at the intersection of the South line of West Webster Avenue with the Southwesterly line of North Elston Avenue; thence South  $44^{\circ} 59' 59''$  East, along the Southwesterly line of North Elston Avenue, 458.97 feet to the point of beginning; thence South  $45^{\circ} 00' 01''$  West 20.00 feet; thence North  $44^{\circ} 59' 59''$  West 20.00 feet; thence North  $45^{\circ} 00' 01''$  East 20.00 feet to the Southwesterly line of North Elston Avenue; thence South  $44^{\circ} 59' 59''$  East, along the Southwesterly line of North Elston Avenue, 20.00 feet to the point of beginning in Cook County, Illinois.

PINS: 14-31-211-030, -031, -032; 14-31-211-038;  
14-31-211-037, 14-31-211-042 thru 14-31-211-049;  
14-31-219-047 through 14-31-219-049

Address: 2100, 2140 & 2196 N. Elston, Chicago, IL