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RASHELLE HOBBS
Recorder, Salt Lake County, UT
SNELL & WILMER
BY: eCASH, DEPUTY - EF 9 P.

PREPARED BY AND RECORDING
REQUESTED BY:

Seyfarth Shaw LLP
1075 Peachtree Street, N.E., Suite 2500
Atlanta, Georgia 30309
Attention: Chris Manzer

WHEN RECORDED, RETURN TO:

Seyfarth Shaw LLP
1075 Peachtree Street, N.E., Suite 2500
Atlanta, Georgia 30309
Attention: Chris Manzer

Parcel Identification Number: 15-19-126-009

(Space Above for Recorder's Use)

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT ("Agreement"), made and entered into as of this 22nd day of July, 2021, by and between ZIONS BANCORPORATION, N.A., dba ZIONS FIRST NATIONAL BANK ("Lender") whose mailing address is One South Main, Suite 400, Salt Lake City, Utah 84133, and HOME DEPOT U.S.A., INC., a Delaware corporation, whose address is 2455 Paces Ferry Road, Atlanta, Georgia 30339-4024, Attention: Property Management ("Tenant");

RECITALS

WHEREAS by a Lease Agreement dated July 9, 2021, as amended (the "Lease"), DLM QOZ 201CC FIVE, LLC, a Utah limited liability company ("Landlord"), has leased to Tenant and Tenant has leased from Landlord all of that certain property in the City of West Valley City, Salt Lake County, State of Utah, more particularly described in the Lease (the "Premises") as the same may have been amended, modified, supplemented, extended or renewed from time to time;

WHEREAS Lender is the current holder of a Leasehold and Fee Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") dated July 22, 2020, executed by Landlord securing an indebtedness in the original principal amount of \$13,925,000.00, and recorded July 22, 2020, in Deed Book 10984, Page 6976, Salt Lake County, Utah, which constitutes a lien against 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 Deed of Trust, 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:

1. The Lease is and shall be subject and subordinate to the lien of the Deed of Trust and to all renewals, modifications, consolidations, replacements, and extensions thereof, 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. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable notice and cure period, in the event of foreclosure of the Deed of Trust or upon a sale of the Premises pursuant to the trustee's power of sale or transfer of the Premises by deed in lieu of foreclosure, 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 and Tenant shall remain in possession of the Premises in accordance with the terms and conditions of the Lease, except as modified herein.

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. This Agreement constitutes notice to Tenant of the Deed of Trust and, upon receipt of notice from Lender, Tenant will pay the Rent as and when due under the Lease to Lender and the payments will be credited against the Rent due under the Lease. By execution of this Agreement, Landlord agrees that any payment of Rent made by Tenant pursuant to a direction by Lender under this Agreement, shall fulfill the obligations of Tenant under the Lease to pay Rent, without any duty of inquiry on the part of Tenant.

5. Lender agrees that the possession of Tenant of the Premises shall not be disturbed except pursuant to the terms of the Lease and this Agreement, and that Lender shall be bound by all of the obligations imposed on Landlord by the Lease except as set forth in this Agreement.

6. Successor Landlord shall not be:

- (a) liable for any act or omission of or any claims against any prior landlord under the Lease (including Landlord) that occur prior to the date of transfer of the Premises, but Successor Landlord shall be liable for any acts or omissions that continue after the date of transfer of the Premises, including without limitation the cure of defaults by Landlord of a continuing nature; provided, however, that Successor Landlord shall not be liable for any monetary damages accruing as a result of acts or omissions of Landlord which occurred prior to Successor Landlord's acquisition of the Property; or

- (b) subject to any offsets or defenses which Tenant might have against any prior landlord under the Lease (including Landlord), unless Lender was given notice and the opportunity to cure the same as provided in this Agreement; provided, however, that Successor Landlord shall not be liable for any monetary damages accruing as a result of acts or omissions of Landlord which occurred prior to Successor Landlord's acquisition of the Property; or
- (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord under the Lease (including Landlord) except with respect to estimated payments on account of Taxes and Operating Expenses required to be paid pursuant to the terms of the Lease to the extent actually paid to Landlord; or
- (d) other than amendments or modifications expressly provided for in the terms of the Lease, bound by any material amendment or modification of the Lease, or waiver of any of its terms, which includes, but is not limited to, any modification or amendment that would reduce the rent or the term of the Lease or materially increase the obligations or liabilities of Landlord under the Lease or materially decrease the Tenant's obligations under the Lease, made without its consent, which consent shall not be unreasonably withheld, conditioned or delayed; or
- (e) liable for the return of any security deposit that was paid to any prior landlord under the Lease (including Landlord), unless the amount of such deposit was actually received by Lender or Successor Landlord; or
- (f) except as expressly provided for in the terms of the Lease, bound by any negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant made without Lender's consent; or
- (g) bound by or subject to any option to purchase or right of first refusal to purchase with respect to the Premises; or
- (h) liable for any breach of representation or warranty of any prior landlord under the Lease (including Landlord).

Nothing in this Agreement shall modify the construction-related obligations contained in Addendum Two to the Lease and the "Landlord's Warranty" related thereto as set forth in Paragraph 2(b) and Addendum Two of the Lease, provided that, if Successor Landlord does not agree in writing, within fifteen (15) days after Tenant's demand after the date of attornment, to perform the foregoing obligations within a reasonable period of time, then Tenant, as its sole remedies, may either (x) terminate the Lease by written notice to Successor Landlord, or (y) take all reasonable actions necessary to perform such obligations referenced in Tenant's notice and withhold the cost of such self-help together with interest accruing at the Default Rate (as defined in the Lease) from future Base Rent until Tenant has been reimbursed in full for the cost of such self-help; provided, however, the amount abated each month shall be limited to fifty percent (50%) of each monthly payment of Base Rent (provided, however, in all events, Tenant shall be entitled to fully recover such costs during the Lease Term so that the percentage of recovery from Base

Rent may increase ratably as required in order to fully recover such costs over the remaining Lease Term).

As used herein, the following terms shall have the corresponding meanings: "Foreclosure Event" means (i) judicial or non-judicial foreclosure under the Deed of Trust; (ii) any other exercise by Lender of rights and remedies (whether under the Deed of Trust or under applicable law, including bankruptcy law) as holder of the Note and/or the Deed of Trust, as a result of which Successor Landlord becomes owner of the Premises; or (iii) delivery by trustee under the Deed of Trust ("Trustee") to Lender (or its designee or nominee) of a deed or other conveyance of Trustee's interest in the Premises in lieu of any of the foregoing; "Successor Landlord" means any party that becomes owner of the Premises as the result of a Foreclosure Event, including, but not limited to, Lender.

7. The terms of Articles 15 and 16 of the Lease addressing casualty and condemnation shall control over any inconsistent provisions in the Deed of Trust.

8. Any claim by Tenant against Successor Landlord under the Lease or this Agreement will be satisfied solely out of Successor Landlord's interest in the Premises, and Tenant will not seek recovery against or out of any other assets of Successor Landlord. Successor Landlord will have no liability or responsibility for any obligations under the Lease that arise subsequent to any transfer of the Premises by Successor Landlord.

9. Tenant shall exercise commercially reasonable efforts to provide Lender, by commercial overnight delivery service, a copy of any notice of default served on Landlord (each, a "Default Notice") at the same time such notice is sent to the Landlord, addressed to Lender at Lender's address set forth above or at such other address as to which Tenant has been notified in writing. Notwithstanding the foregoing, Tenant shall have no liability to Lender or Landlord for any failure to provide such written notice. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Lender agrees or undertakes otherwise in writing. Tenant agrees not to terminate the Lease or offset self-help expenses against rent due under the Lease as a result of a default of Landlord unless Tenant has sent Lender a Default Notice and Lender has failed, within thirty (30) days beyond the cure period available to Landlord under the Lease applicable to such default, to cure such default of Landlord; provided that, as to any breach or default by Landlord the cure of which requires Lender to possess and control the Premises, if Lender undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure such breach or default within the period permitted by this paragraph, then Lender's cure period shall continue for such additional time not to exceed one hundred eighty (180) days (the "Extended Cure Period") as Lender may reasonably require to obtain possession and control of the Premises and thereafter to cure the breach or default with reasonable diligence and continuity. So long as any receiver of the Premises has been appointed and is continuing to serve, Lender shall be deemed to have possession and control of the Premises.

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

11. 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. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the Lender and Tenant, and any Successor Landlord.

[SIGNATURES ON FOLLOWING PAGES]

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: [Signature]

Name: John Chescauge

Title: Corporate Counsel

CSM

STATE OF GEORGIA
COUNTY OF Cobb

On this 7 day of July, 2021, before me, the undersigned notary public in and for said County and State, personally appeared JOHN CHESCAUGE, as Corporate Counsel of HOME DEPOT U.S.A., INC., a Delaware corporation, and the signer of the foregoing instrument, who duly acknowledged to me that he executed the same on behalf of said limited liability company for its stated purpose.

WITNESS my hand and Notarial Seal this 7 day of July, 2021.

[Signature]

Notary Public
Printed Name: Barbara Turner

Residing at: Atlanta, GA

My Commission Expires: 9/10/2022

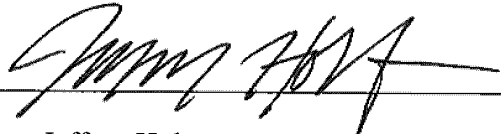
Barbara Turner
NOTARY PUBLIC
Fulton County, GEORGIA
My Commission Expires 09/10/2022

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES TO SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENMENT AGREEMENT
CONTINUED FROM PREVIOUS PAGE]

LENDER:

ZIONS BANCORPORATION, N.A., dba ZIONS
FIRST NATIONAL BANK

By: 

Name: Jeffrey Holt

Title: Senior Vice President

STATE OF Utah
COUNTY OF Salt Lake

On this 22 day of July, 2021, before me, the undersigned notary public in and for said County and State, personally appeared Jeffrey Holt, the Senior Vice President of ZIONS BANCORPORATION, N.A., dba ZIONS FIRST NATIONAL BANK, and the signer of the foregoing instrument, who duly acknowledged to me that he executed the same on behalf of said company for its stated purpose.

WITNESS my hand and Notarial Seal this 22nd day of July, 2021.



Notary Public

Printed Name: Terri Miller

Residing at: Salt Lake City

My Commission Expires: July 2, 2022



[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES TO SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT
CONTINUED FROM PREVIOUS PAGE]

LANDLORD:

DLM QOZ 201CC FIVE, LLC, a Utah limited liability company

By: _____

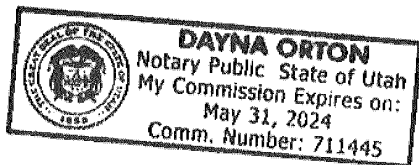
Name: David S. Layton

Title: Manager

STATE OF UTAH
COUNTY OF SALT LAKE

On this 07th day of July, 2021, before me, the undersigned notary public in and for said County and State, personally appeared David S. Layton, the Manager of DLM QOZ 201CC FIVE, LLC, a Utah limited liability company, and the signer of the foregoing instrument, who duly acknowledged to me that he executed the same on behalf of said limited liability company for its stated purpose.

WITNESS my hand and Notarial Seal this 07th day of July, 2021.



Notary Public

Printed Name: DAYNA ORTON

Residing at: WARRIOR, UT 84107

My Commission Expires: 5/31/2024

EXHIBIT A
LEGAL DESCRIPTION

That certain real property located in Salt Lake County, Utah, more particularly described as follows:

Lot 401, 201 Commerce Center Subdivision No. 4, according to the official plat thereof on file and of record in the Salt Lake County Recorder's Office.