

Clinton City, UT Location No. 2845

**RECORDING REQUESTED BY AND  
WHEN RECORDED, MAIL TO:**

Western Alliance Bank  
5335 Kietzke Lane  
Reno, Nevada 89511  
Attention: Erin Retzer-Stehura

1802103

14-476-0002

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**MORTGAGEE NONDISTURBANCE AGREEMENT**

THIS MORTGAGEE NONDISTURBANCE AGREEMENT (this "Agreement"), is made and entered into as of the date of the last execution hereof, which date is the 16th day of September, 2022, by and among WESTERN ALLIANCE BANK, an Arizona corporation ("Lender"), CLINTON CITY CENTER, LLC, a Utah limited liability company ("Landlord"), and LOWE'S HOME CENTERS, LLC, a North Carolina limited liability company, successor by merger to LOWE'S HIW, INC., a Washington corporation ("Tenant") (collectively, Lender, Landlord and Tenant are the "Parties" and individually, a "Party").

WITNESSETH:

WHEREAS, Lender is the holder of a Revolving Line of Credit Promissory Note dated September 16, 2022, in the original principal amount of \$10,000,000.00, which is secured, inter alia, by a Deed of Trust And Security Agreement And Fixture Filing With Assignment of Rents (the "Indenture") and an Assignment of Leases And Rents (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 Lease dated October 31, 2007 (the "Lease"). A Memorandum of Ground Lease is recorded in the Official Records of Davis County, State of Utah as Entry No. 2322283, in Book 4413, at Page 1457; 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 Nondisturbance Agreement and their successors. 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 is not in material default under the Lease, 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 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 September 15, 2022, 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 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.

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 leased 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 when mailed by registered or certified mail, return receipt requested, or by express mail, in any event with sufficient postage affixed, and addressed to the Party as follows:

To Lender: Western Alliance Bank  
5335 Kietzke Lane  
Reno, Nevada 89511

To Landlord: Clinton City Center, LLC  
1178 W. Legacy Crossing Blvd.  
Suite 100  
Centerville, UT 84014

To Tenant: Lowe's Home Centers, LLC  
1000 Lowe's Boulevard  
 Mooresville, NC 28117  
Attention: Property Management (PMT-62)

With a copy to:  
Lowe's Home Centers, LLC  
1000 Lowe's Boulevard  
 Mooresville, NC 28117  
Attention: Real Estate Legal (LGL)

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 jointly and severally agree that they will furnish Lender with copies of all notices relating to the Lease.

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 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.

*[Remainder of Page Intentionally Left Blank; Signatures Follow]*

**LENDER'S SIGNATURE PAGE TO MORTGAGEE NONDISTURBANCE AGREEMENT:**

"LENDER":

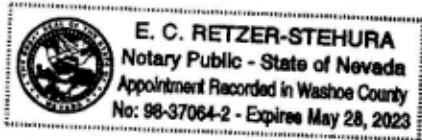
WESTERN ALLIANCE BANK, an  
Arizona corporation

By: Lucy N. McGuire  
LUCYN. MCQUIRE *mcguire*  
Its: Director – Commercial Banking

STATE OF NEVADA        )  
                                          :SS  
COUNTY OF WASHOE    )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of September, 2022, by Lucy N. McGuire as Director – Commercial Banking of Western Alliance Bank, an Arizona corporation.

E. C. Retzer - Stehura  
NOTARY PUBLIC  
My commission expires: 5/28/23

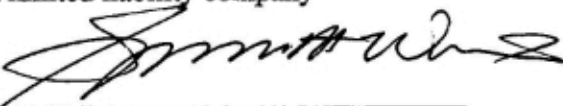


**LANDLORD'S SIGNATURE PAGE TO MORTGAGEE NONDISTURBANCE  
AGREEMENT:**

"LANDLORD":

CLINTON CITY CENTER, LLC,  
a Utah limited liability company

By: \_\_\_\_\_



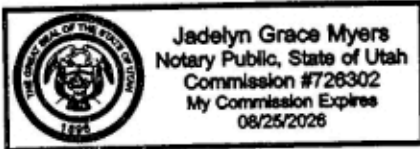
SPENCER H. WRIGHT  
Manager

STATE OF UTAH )

:SS

COUNTY OF DAVIS )

This instrument was acknowledged before me on September 19, 2022, by Spencer H. Wright, Manager of Clinton City Center, LLC, a Utah limited liability company.

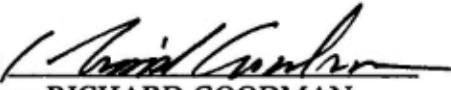


Jadelyn Grace Myers  
NOTARY PUBLIC  
My commission expires: 8/25/2028

**TENANT'S SIGNATURE PAGE TO MORTGAGEE NONDISTURBANCE AGREEMENT:**

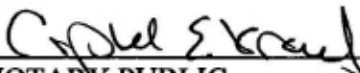
"TENANT":

LOWE'S HOME CENTERS, LLC, a  
North Carolina limited liability company,  
successor by merger to Lowe's HIW, Inc., a  
Washington corporation

By:   
Name: RICHARD GOODMAN  
Title: Vice President  
*SJL LN MK*

STATE OF NORTH CAROLINA )  
                                          :SS  
COUNTY OF IREDELL     )

The foregoing instrument was acknowledged before me this 29 day of  
September, 2022, by Richard Goodman, Vice President of Lowes Home Centers, LLC, a  
North Carolina limited liability company

  
NOTARY PUBLIC  
Residing at: Lincoln County

My commission expires:  
2-7-2022





**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**Legal Description of Demised Premises**

A part of Lot 1, Clinton City Center Plat, Clinton City, Davis County, Utah being a part of the Northwest Quarter of Section 27, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point 533.44 feet North 89°59'21" East along the Section line and 662.14 feet North 0°00'20" East from the Southwest corner of said Quarter Section and running thence North 610.25 feet; thence Northeasterly along the arc of a 50.00 foot radius curve to the left a distance of 34.60 feet (Long Chord bears North 35°47'25" East 33.91 feet); thence North 0°00'30" West 3.91 feet; thence North 89°59'42" East 320.00 feet; thence North 0°00'01" West 20.00 feet; thence North 89°59'42" East 452.14 feet to the East line of Dawson Estates Subdivision in Clinton City, Davis County, Utah; thence South 0°05'28" West 664.39 feet along said East line and the East line of Kendal Estates Subdivision in Clinton City, Davis County, Utah; thence West 2.95 feet; thence South 0°07'36" West 22.33 feet; thence West 409.74 feet; thence North 15.00 feet; thence West 32.26 feet; thence North 88°09'41" West 311.29 feet thence West 34.78 feet to the point of beginning.

Contains 12.135 Acres