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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2017 067355

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MICHAEL B. BROWN
RECORDER

Prepared by and
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SUBORDINATION, NON-DISTURBANCE AND ATTORNTMENT AGREEMENT



Date:

June 14, 2017

Lender:

CITIGROUP GLOBAL MARKETS REALTY CORP. and MORGAN STANLEY
BANK, N.A.

Tenant:

KOHL'S INDIANA, L.P.

Landlord:

DDRM HIGHLAND GROVE LLC, A DELAWARE LIMITED LIABILITY
COMPANY

AMOUNT \$ 25.00
CASH _____ CHARGE _____
CHECK# 40847
OVERAGE _____
COPY _____
NON-CONF _____
DEPUTY MB

E

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

THIS AGREEMENT made as of this 14th day of June, 2017, by and among **CITIGROUP GLOBAL MARKETS REALTY CORP.** and **MORGAN STANLEY BANK, N.A.** (together with their respective successors, assigns, designees and/or nominees, collectively hereinafter referred to as "Lender"), **KOHL'S INDIANA, L.P.**, a Delaware limited partnership ("Tenant") and **DDRM HIGHLAND GROVE LLC**, a Delaware limited liability company ("Landlord").

RECITALS:

A. Tenant entered into a certain lease agreement dated August 19, 1994, as amended, modified and/or supplemented by that certain Notice of Change of Ownership July 3, 1996; First Amendment to Lease dated December 6, 2000; Assignment and Assumption of Lease dated February 2, 2002; Notice of Change of Ownership dated May 12, 2006; Notice of Change of Ownership dated June 13, 2007; Second Amendment to dated September 1, 2009; and Notice Letter exercising the first option to extend the Lease dated January 19, 2015 (collectively, the "Lease") for a portion of certain premises located in the Town of Highland, Lake County, Indiana, as legally described in Exhibit A attached hereto and made a part hereof (the "Premises").

B. Lender has made or will make a loan to Landlord (hereinafter referred to as the "Loan"), which such Loan is (i) secured by a deed of trust, mortgage or security deed (as the same may be amended, restated, extended, or otherwise modified from time to time, the "Security Instrument") from Landlord to Lender covering certain property including the Premises and (ii) evidenced by certain other documents and instruments by and among Lender and Landlord, among others (the same, together with the Mortgage, collectively, the "Loan Documents").

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

3. Tenant agrees with Lender that if the interest of Landlord 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, Tenant shall be bound to Lender or such purchaser, grantee or other successor to Landlord's interest ("Successor Landlord") 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 Landlord were the landlord under the Lease. Tenant does hereby agree to attorn to the Successor Landlord, and Tenant further covenants and agrees to execute and deliver upon request of Lender an appropriate agreement of attornment to Lender and any subsequent titleholder of the Premises.

4. At such time that Successor Landlord succeeds to the interest of Landlord under the Lease, Successor Landlord shall be bound to Tenant 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, Tenant agrees that a Successor Landlord 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 Tenant may have paid for more than the current or next succeeding month to any prior landlord;
- (c) obligated to perform any work in the Premises or any part thereof, other than such work which is required to be performed by Landlord under the Lease;
- (d) bound by any amendment or modification of the Lease made without Lender's written consent, which (i) reduces fixed annual rent; (ii) materially reduces any other monetary obligation of Tenant under the Lease; or (iii) reduces the length of the term of the Lease. Notwithstanding the foregoing, Tenant is not responsible for obtaining Lender's consent to any such modifications, and, in the event Landlord fails to accomplish the same, Landlord shall be liable to Tenant for any damages to Tenant as a result thereof; or
- (e) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) which has not, as such, been transferred to Successor Landlord.

5. Tenant will notify Lender of any default of Landlord under the Lease which Tenant 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 Landlord 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:

Lender: Citigroup Global Markets Realty Corp.
390 Greenwich Street, 7th Floor
New York, New York 10013
Attention: CMBS Real Estate Legal Notices

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Morgan Stanley Bank, N.A.
1585 Broadway, 25th Floor
New York, New York 10036
Attention: George Kor

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Landlord: DDRM HIGHLAND GROVE LLC
c/o DDR Corp.
3300 Enterprise Parkway
Beachwood, OH 44122
Attention: Exec. Vice President – Leasing
cc: General Counsel

Tenant: Kohl's Indiana, L.P.
N56 W17000 Ridgewood Drive
Menomonee Falls, Wisconsin 53051
Attention: Chairman

with a copy to: Kohl's Indiana, L.P.
W165 N5830 Ridgewood Drive
Menomonee Falls, Wisconsin 53051
Attention: Portfolio Management

and a copy to: Kohl's Indiana, L.P.
N56 W17000 Ridgewood Drive
Menomonee Falls, Wisconsin 53051
Attention: Law Department

6. Provided Landlord has irrevocably and unconditionally directed Tenant to comply with such demand, Tenant shall, upon Lender's demand therefor, thereafter pay directly to Lender all amounts thereafter payable by Tenant to Landlord 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 "Tenant" shall include Tenant, 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 Landlord'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 Landlord.

[SIGNATURES ON FOLLOWING PAGE(S)]



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

LENDER:

CITIGROUP GLOBAL MARKETS REALTY CORP.

By: [Signature]
Name: Harry Kramer
Title: Vice President



STATE OF New York §
COUNTY OF New York §

This instrument was acknowledged before me on the June day of 2017, by Harry Kramer, Vice President of Citigroup Global Markets Realty Corp. a corporation of New York behalf of said corporation.

[S E A L]

Notary Public - State of New York

My Commission Expires: 7/15/17

Printed Name of Notary Public

Chantal J. Lapice

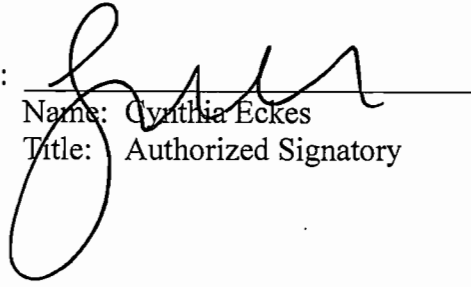
Chantal J. Lapice
Notary Public, State of New York
No. 0116285764
Qualified in New York County
Commission Expires July 15, 2017

MORGAN STANLEY BANK. N.A.

By: _____

Name: Cynthia Eckes

Title: Authorized Signatory



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STATE OF NEW YORK §

COUNTY OF NEW YORK §

STOP

This instrument was acknowledged before me on the 10 day of June, 2017 by Cynthia Eckes, Authorized Signatory of Morgan Stanley Bank N.A., on behalf of Morgan Stanley Bank N.A.

[S E A L]



Notary Public - State of _____

My Commission Expires: _____

Printed Name of Notary Public _____

GEORGE HSU
Notary Public, State of New York
No. 01HS6336848
Qualified In New York County
Commission Expires 02/08/2020

TENANT:

KOHL'S INDIANA, L.P., a Delaware limited partnership

By: *Sarah J Ryan*

Name: Sarah J. Ryan

Title: Director of Property Development Law of Kohl's Department Stores, Inc.

Its: Authorized Agent

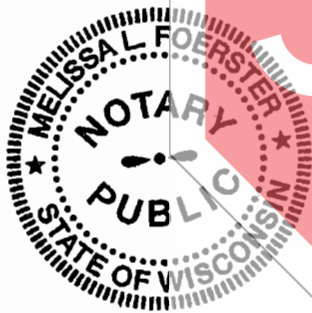
STATE OF WISCONSIN

COUNTY OF WAUKESHA

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Personally came before me this 10 day of June, 2017, the above-named Sarah J. Ryan, to me known to be the Director of Property Development Law of Kohl's Department Stores, Inc., as Authorized Agent for Kohl's Indiana, L.P. a Delaware limited partnership, to me known to be the person who executed the foregoing instrument and acknowledged the same.



Melissa Foerster
Notary Public

My Commission Expires: 1/26/19



EXHIBIT A

LEGAL DESCRIPTION

A PORTION OF THE FOLLOWING PROPERTY:

THAT PART OF THE WEST HALF OF THE SOUTHWEST QUARTER, LYING WEST OF A LINE THAT IS 13 FEET WEST OF AND PARALLEL TO THE WEST LINE OF THE NEW YORK CENTRAL RAILROAD RIGHT OF WAY IN THE SOUTHWEST QUARTER OF THE SECTION OF 33, TOWNSHIP 36 NORTH, RANGE 9 WEST OF THE 2ND P. M., AND PART OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 16 NORTH RANGE 9 WEST OF THE 2ND P. M. DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33, THENCE SOUTHERLY ON AND ALONG THE WEST LINE OF SAID SECTION 33, A DISTANCE OF 225 FEET TO A POINT; THENCE EASTERLY PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33 A DISTANCE OF 168.3 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF U. S. HIGHWAY NO. 41, SAID POINT BEING MARKED BY AN IRON PIPE WHICH IS THE POINT OF BEGINNING; THENCE CONTINUING EASTERLY PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 661.1 FEET TO A POINT MARKED BY AN IRON PIPE; THENCE SOUTHEASTERLY A DISTANCE OF 439.25 FEET TO A POINT MARKED BY AN IRON PIPE, SAID POINT BEING 306.7 FEET SOUTH OF THE NORTH LINE OF THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 36 NORTH, A RANGE 9 WEST OF THE 2ND P. M., ON THE WEST LINE OF A STRIP OF LAND CONVEYED TO ILLANA COMPANY BY DEED RECORDED IN DEED RECORD 592, PAGE 423; THENCE SOUTHERLY ALONG THE WEST LINE OF SAID STRIP OF LAND A DISTANCE OF 2,360 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 33, WHICH IS THE CENTERLINE OF MAIN STREET (53RD AVENUE); THENCE WESTERLY ALONG THE SOUTH LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 33, TO THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33, THENCE NORTHERLY ALONG THE WEST LINE OF SECTION 33, A DISTANCE OF 50.09 FEET; THENCE NORTH 34 DEGREES 42 MINUTES 57 SECONDS WEST, A DISTANCE OF 17.74 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF U. S. NO. 41 IN THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 36 NORTH, RANGE 9 WEST OF THE 2ND P. M.; THENCE NORTH 01 DEGREE 16 MINUTES 54 SECONDS EAST, ALONG THE EASTERLY LINE OF THE U.S. NO. 41, A DISTANCE OF 248.40 FEET; THENCE NORTH 02 DEGREES 44 MINUTES 32 SECONDS EAST, ALONG THE EASTERLY LINE OF U. S. NO. 41, A DISTANCE OF 618.6 FEET; THENCE NORTH 2 DEGREES 51 MINUTES 00 SECONDS EAST, ALONG THE EASTERLY LINE OF U. S. NO. 41, A DISTANCE OF 792.52 FEET; THENCE NORTH 00 DEGREES 06 MINUTES 28 SECONDS WEST, ALONG THE EASTERLY LINE OF U. S. NO. 41, A DISTANCE OF 466.8 FEET, THENCE NORTH 04 DEGREES 22 MINUTES 03 SECONDS EAST, ALONG THE EASTERLY LINE OF U. S. NO. 41, A DISTANCE OF 230.08 FEET, TO THE POINT OF BEGINNING, ALL IN THE TOWN OF HIGHLAND, LAKE COUNTY, INDIANA.

