

UNOFFICIAL COPY



This Instrument When Recorded
Return to:

John Hancock Life Insurance Company (U.S.A.)
Real Estate Law Division, C-3
197 Clarendon Street
Boston, MA 02116
Attention: Donna H. Frankel, Esq.

Doc#: 1024410030 Fee: \$50.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/01/2010 09:58 AM Pg: 1 of 8

Property of Cook County Clerk's Office

SPACE ABOVE THIS LINE FOR PROCESSING

SPACE ABOVE THIS LINE FOR RECORDING DATA

Loan No. 526483:11

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Dated: As of August 31, 2010

Location of Property:

The Point at Clark
3131 North Clark Street
Chicago, Illinois 60657

First American Title Order # NCS 431386 E JEL 5044

8

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This Instrument Prepared By and When Recorded
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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (hereinafter referred to as the "Agreement") is made as of the 31st day of August, 2010 by and among John Hancock Life Insurance Company (U.S.A.), a Michigan corporation, having a principal place of business at 197 Clarendon Street, C-3, Boston, MA 02116 (hereinafter referred to as "Mortgagee"), Inland Point At Clark, L.L.C. a Delaware limited liability company (successor-in-interest to HSS Real Estate, Inc.) (hereinafter referred to as "Landlord"), and Marshalls of IL, LLC (successor-in-interest to Marshalls of Chicago-Clark IL having a principal place of business at 770 Cochituate Road, Framingham, MA 01701 (hereinafter referred to as "Tenant").

WITNESSETH

WHEREAS, Landlord and Tenant entered into that certain lease dated of the day of dated July 31, 1994, as amended by Letter Agreement dated October 24, 1994, by First Amendment to Lease dated November 15, 1994, by Letter Agreement dated 1/13/1995, by Letter Agreement dated 3/29/1996, by Second Amendment to Lease dated June 16, 1995 by Third Amendment to Lease dated September 21, 1995, by Fourth Amendment to Lease dated July 26, 2002, and by Amended and Restated Fifth Amendment to Lease dated April 1, 2010 (hereinafter collectively referred to as the "Lease"), whereby Landlord leased to Tenant those certain premises more specifically described in the Lease (hereinafter referred to as the "Leased Premises") and located in a portion of the building located at 3131 North Clark Street in Chicago, Illinois (hereinafter referred to as the "Mortgaged Premises"); and

WHEREAS, Landlord or its nominee has executed a first mortgage to Mortgagee dated as of even date herewith, which mortgage shall be recorded in the Office of the Recorder of Deeds of Cook County, State of Illinois (hereinafter referred to as the "Mortgage").

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Now, THEREFORE, for and in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed among the parties as follows:

1. The Lease is and shall at all times hereafter be subject and subordinate to the lien of the Mortgage and all increases, amendments, renewals, modifications, substitutions, consolidations and extensions thereof.
2. Mortgagee covenants and agrees that, in the event Mortgagee comes into possession of or acquires title to the Mortgaged Premises as a result of foreclosure, deed in lieu of foreclosure, or other enforcement of the Mortgage, or as a result of any other means, so long as Tenant is not in default of its obligations under the Lease beyond all available cure periods, Tenant shall peaceably and quietly have, hold and enjoy the Leased Premises and the appurtenant rights thereto for the full term of the Lease, as the same may be extended or earlier terminated in accordance with the provisions of the Lease, subject to the terms, covenants, conditions, provisions and agreements thereof (including, without limitation, the application of insurance proceeds and eminent domain awards as provided in the Lease).
3. In the event Mortgagee comes into possession of or acquires title to the Mortgaged Premises as a result of foreclosure, deed in lieu of foreclosure or other enforcement of the Mortgage, or as a result of any other means, Tenant agrees to attorn to and accept Mortgagee as landlord under the Lease for the balance then remaining of the term of the Lease, as the same may be extended in accordance with the provisions of the Lease, subject to all of the terms and conditions of the Lease.
4. Tenant agrees to give prompt written notice to Mortgagee of any default of Landlord under the terms of the Lease, if such default is of such nature as to give rise to Tenant's rights under the Lease of termination or reduction of rent or of the right under the Lease to credit or offset any amounts against future rents, and Mortgagee shall have the same opportunity to cure such default as is available to Landlord under the Lease. It is further agreed that such notice will be given to any successor in interest to Mortgagee, provided that, prior to any such default of Landlord, such successor in interest shall have given written notice to Tenant of its acquisition of Mortgagee's interest, and designated the address to which such notice is to be directed.
5. In consideration of the foregoing agreements of Tenant, Mortgagee agrees that, so long as Tenant is not in default of the terms of the Lease beyond all available cure periods, it will not join or name Tenant as a party in any proceedings to foreclose the Mortgage (unless such joinder is required by law in order to foreclose the Mortgage, and then only for such purpose and not for the purpose of terminating the Lease), it will not disturb Tenant's possession of the Leased Premises under the Lease upon Mortgagee's coming into possession of or acquisition of title to the Mortgaged Premises as a result of foreclosure, deed in lieu of foreclosure, or other enforcement of the Mortgage, or as a result of any other means, it will accept the attornment of Tenant, and it will assume and perform (but only while owner of or in possession or control of the Mortgaged and/or Leased Premises) all of Landlord's obligations under the Lease.

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6. Tenant agrees that if Mortgagee shall succeed to the interest of Landlord under the Lease, Mortgagee shall not be: (a) liable for any act or omission of any prior landlord (including Landlord) under the Lease; (b) bound by any rent or additional rent which Tenant may have paid for more than the current month to any prior landlord, unless such prepayment was required pursuant to the terms of the Lease; (c) bound by any security deposit which Tenant paid to any prior landlord, unless such security deposit has been received by Mortgagee; or (d) bound by any amendment or modification of the lease, made without its consent, which reduces the rent or the Term.
7. In the event Tenant terminates the Lease, Tenant shall pay to Mortgagee any and all termination fees or other consideration to be paid to Landlord expressly set forth in the Lease in connection with such termination or cancellation and Landlord, by its execution hereof, hereby directs Tenant to make such payments or provide such other consideration to Mortgagee;
8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The term "Mortgagee" as used herein shall include, without limitation, the Mortgagee herein specifically named and any of its successors, participants and assigns, including without limitation anyone who shall have succeeded to Landlord's interest in the Lease by, through or under foreclosure of the Mortgage, deed in lieu of foreclosure, or other enforcement of the Mortgage.
9. If the Mortgage is secured by a deed of trust or security deed rather than by a mortgage, all references herein to the Mortgage shall be construed as referring to such other type of security instrument.
10. All notices and other communications pursuant to the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by a reputable commercial overnight carrier that provides a receipt, such as Federal Express, and shall be deemed given when received and addressed as noted below, or to such other address or addresses as shall from time to time be designated by notice by any party to the others as herein provided.

If to Tenant: Marshalls of IL, LLC, 770 Cochituate Road, Framingham, Massachusetts 01701, Attention: Vice President-Real Estate and copies of default notices shall also be sent to 770 Cochituate Road, Framingham, Massachusetts 01701, Attention: Legal Department, Vice President, Legal – Real Estate except invoices and reconciliations of additional rent should be sent to Tenant c/o The TJX Companies, Inc., Lease Administration Department, Route 500A-1, 770 Cochituate Road, Framingham, MA 01701.

If to Mortgagee: John Hancock Life Insurance Company (U.S.A.), 197 Clarendon Street, C-3, Boston, MA 02116, Attn: Real Estate Finance Group, Re: Loan No. 526483:11.

If to Landlord: Inland Real Estate Corporation, 2901 Butterfield Road, Oak Brook, IL 60523, Attn: Mark Zalatoris, President.

11. The individuals executing this Agreement hereby represent and warrant that they are empowered and duly authorized to so execute this Agreement on behalf of the parties they represent.

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IN WITNESS WHEREOF, the parties hereto have caused the execution hereof as of the day and year first above written.

Tenant:

MARSHALLS OF IL, LLC
a Delaware limited liability company

By: Ann McCauley
Ann McCauley
Secretary

By: Mary B Reynolds
Mary B. Reynolds
Vice President / Treasurer

WITNESS

(1) Attest: [Signature]

(2) Attest: Eileen L. Healy

Mortgagee:

JOHN HANCOCK LIFE INSURANCE
COMPANY (U.S.A.)

By: David Connors
Its: David N. Connors
Senior Investment Officer

WITNESS

(1) Attest: Margaret Doyle
Its: _____

(2) Attest: Deanna Harlan
Its: _____

Landlord:

INLAND POINT AT CLARK, L.L.C., a
Delaware limited liability company
By: Inland Real Estate Corporation, a Maryland
corporation, its sole member

By: Brett A. Brown
Its: Brett A. Brown
Senior Vice President
Chief Financial Officer

WITNESS

(3) Attest: [Signature]
Its: Vice President

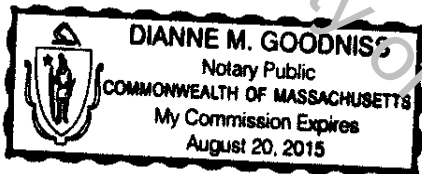
(4) Attest: Richard L. [Signature]
Its: Vice President

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ACKNOWLEDGEMENTS

COMMONWEALTH OF MASSACHUSETTS)
) ss.
 COUNTY OF MIDDLESEX)

On this 26th day of August, 2010, before me, the undersigned notary public, personally appeared Ann McCauley as Secretary and Mary B. Reynolds as Vice President/Treasurer, respectively, of MARSHALLS OF IL, LLC on behalf of the Delaware limited liability company, proved to me through satisfactory evidence of identification, which is personal knowledge of the identity of both, to be the people whose names are signed on the preceding document and who acknowledged that they signed it voluntarily for its stated purpose.



Dianne M. Goodniss
 Notary Public

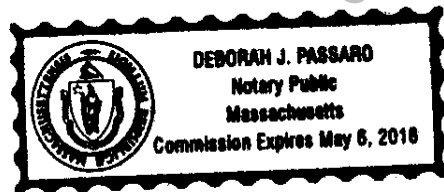
MORTGAGEE:

THE COMMONWEALTH OF MASSACHUSETTS)
) ss.
 COUNTY OF SUFFOLK)

On this 30th day of August, 2010, before me, the undersigned Notary Public, personally appeared David W. Connors proved to me through satisfactory evidence of identification, which was ~~were~~ personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/~~she~~ signed it voluntarily for its stated purpose(s) as Sr. Investment Officer for John Hancock Life Insurance Company (U.S.A.).

Deborah J. Passaro
 Signature of Notary

(Seal)



My commission expires: _____

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LANDLORD:

STATE OF ILLINOIS)
)ss
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Brett A. Brown personally came before me this day and acknowledged that he/she is the Senior Vice President of INLAND REAL ESTATE CORPORATION., a Maryland corporation which is the sole member of INLAND POINT AT CLARK, L.L.C., a Delaware limited liability company and that he/she as its Senior Vice President, being duly authorized to do so, executed the foregoing instrument on behalf of the corporation.

WITNESS my hand and official seal, this 28th day of August, 2010.
Notary Public, State of Illinois
Name: Mary Feko
Commission No: _____
My Commission Expires: _____

(Notary Seal)



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EXHIBIT A

TO

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

LEGAL DESCRIPTION

LOTS 1 AND 2 IN BLOCK 1 IN GEHRKE AND BRAUCKMANN'S SUBDIVISION OF BLOCK 1 (EXCEPT THE 4.28 ACRES IN THE NORTH PART OF SAID BLOCK WHICH LIES WEST OF GREEN BAY ROAD) IN CANAL TRUSTEE'S SUBDIVISION OF THE EAST 1/2 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; TOGETHER WITH THOSE PARTS OF LOTS 3, 4, 5 AND 6 IN THE RESUBDIVISION OF LOT 3 IN BLOCK 1 IN GEHRKE AND BRAUCKMANN'S SUBDIVISION OF OUTLOT NUMBER 1 OF CANAL TRUSTEE'S SUBDIVISION OF THE EAST 1/2 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE NORTH 4.28 ACRES OF THAT PART OF SAID OUTLOT WHICH LIES WEST OF GREEN BAY ROAD) LYING SOUTH OF A LINE DRAWN PARALLEL WITH AND 26.00 FEET NORTH FROM THE SOUTH LINE (AND SAID SOUTH LINE EXTENDED WEST) OF SAID RESUBDIVISION OF LOT 3, IN COOK COUNTY, ILLINOIS.

APN:

14-29-205-008

14-29-205-009

14-29-205-011

14-29-205-012

14-29-205-013

14-29-205-014

14-29-205-016

14-29-205-017. Volume 488