

UNOFFICIAL COPY

Loan No. 526913-11



Doc#: 1235501032 Fee: \$58.00
Karen A. Yarbrough RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/20/2012 10:08 AM Pg: 1 of 11

Prepared by [Signature]
After Recording, Return to:

John Hancock Life Insurance Company (U.S.A.)
197 Clarendon Street, C-3
Boston, MA 02116
Attn: Real Estate Finance Group

891 7393

(The Above Space for Recorder's Use Only)

Subordination, Non-Disturbance and Attornment Agreement

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made as of the 04 day of December, 2012, by and between JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.), a Michigan corporation, having an office 197 Clarendon Street, Boston, MA 02116 (the "**Mortgagee**") and BED BATH & BEYOND OF LINCOLN PARK INC, Inc., an Illinois corporation, having an office at 650 Liberty Avenue, Union, New Jersey 07083 (the "**Tenant**").

WITNESSETH:

WHEREAS, Mortgagee is the holder of a mortgage (the "**Mortgage**") covering a parcel of land owned by CMR Limited Partnership, an Illinois limited partnership (the "**Landlord**"), together with the improvements erected thereon (said parcel of land and improvements thereon being hereinafter referred to as the "**Shopping Center**") and being more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, by a certain Lease Agreement heretofore entered into between Landlord and Tenant dated December 13, 1993, as amended by that certain First Amendment of Lease dated January 31, 1994, Second Amendment of Lease dated July __, 1994, Agreement dated as of August 23, 1995 pertaining to the Commencement Date and expiration date of the Lease, and as evidenced by that certain Memorandum of Lease dated January 30, 1994 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois as Instrument No. 94212986 (collectively, the "**Lease**"), Landlord leased to Tenant a portion of the Shopping Center, as more particularly described in the Lease (the "**Premises**"); and

WHEREAS, a copy of the Lease has been delivered to Mortgagee, the receipt of which is hereby acknowledged; and

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Loan No. 526913:11

WHEREAS, Section 24 of the Lease provides that the Lease shall become subject and subordinate to a mortgage encumbering the fee interest of the Landlord in and to the Shopping Center if and when a non-disturbance agreement is entered into with respect to such mortgage; and

WHEREAS, the parties hereto desire to effect the subordination of the Lease to the Mortgage and to provide for the non-disturbance of Tenant by Mortgagee.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Mortgagee hereby consents to and approves the Lease and the term thereof, including the options to extend the term as set forth in the Lease, and covenants and agrees that the exercise by Tenant of any of the rights, remedies and options therein contained shall not constitute a default under the Mortgage.

2. Tenant covenants and agrees with Mortgagee that the Lease hereby is made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage, and to all modifications and extensions thereof (and such subordination shall not lessen or diminish Tenant's rights under the Lease), subject, however, to the provisions of this Agreement.

3. Mortgagee agrees that so long as the Lease shall be in full force and effect, and so long as Tenant shall not be in default under the Lease beyond any applicable notice and grace period:

(a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby;

(b) The possession by Tenant of the Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise affected by (i) any suit, action or proceeding brought upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Premises or the Shopping Center, or any deed given in lieu of foreclosure, or by the exercise of any other rights given to any holder of the Mortgage or other documents as a matter of law, or (ii) any default under the Mortgage or the bond or note or other obligation secured thereby; and

(c) All condemnation awards and insurance proceeds paid or payable with respect to the Premises or any other part of the Shopping Center shall be applied and paid in the manner set forth in the Lease.

UNOFFICIAL COPY

Loan No. 526913:11

4. If Mortgagee or any future holder of the Mortgage shall become the owner of the Shopping Center by reason of foreclosure of the Mortgage or otherwise, or if the Shopping Center shall be sold as a result of any action or proceeding to foreclose the Mortgage, or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the then owner of the Shopping Center, as "landlord", upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its option to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease; and

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term) which such new owner hereby agrees to assume and perform and Tenant shall, from and after the date such new owner succeeds to the interest of "landlord" under the Lease, have the same remedies against such new owner for the breach of any covenant contained in the Lease that Tenant might have had under the Lease against Landlord if such new owner had not succeeded to the interest of "landlord"; provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) unless such act or omission continues from and after the date upon which the new owner succeeds to the interest of such prior landlord;

(ii) subject to any defenses which Tenant may have against any prior landlord (including Landlord) unless resulting from any default or breach by such prior landlord which continues from and after the date upon which the new owner succeeds to the interest of such prior landlord;

(iii) subject to any offsets which Tenant may have against any prior landlord, except to the extent such offsets are expressly provided under the Lease and Mortgagee has received notice thereof and the opportunity to cure within the applicable time periods set forth in the Lease (it being further agreed that offsets under the Lease that were deducted by Tenant prior to the date upon which the new owner succeeds to the interest of such prior landlord shall not be subject to challenge);

(iv) bound by any fixed rent which Tenant might have paid for more than one month in advance of its due date under the Lease to any prior landlord (including Landlord), unless such additional rent is paid in accordance with the applicable provisions of the Lease; or

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Loan No. 526913:11

(v) bound by any amendment or modification of the Lease made without its consent (unless Mortgagee's consent is not required under the terms of the Mortgage); notwithstanding the foregoing, Mortgagee acknowledges that the Lease specifically provides for amendments thereof upon the occurrence of certain events described in the Lease (such as, for example, an amendment to the Lease confirming the measurement of the Premises), and, by its execution below, Mortgagee agrees to recognize such amendments as part of the Lease, and Mortgagee further agrees that such new owner shall also be bound by such amendment(s) to the Lease, without any consent on the part of Mortgagee or such new owner.

(c) Tenant's obligations hereunder shall be effective only so long as Mortgagee is bound to Mortgagee's obligations hereunder.

5. Tenant will notify Mortgagee of any default by Landlord under the Lease which would entitle Tenant to terminate the Lease or abate the rent payable thereunder and agrees that notwithstanding any provision of the Lease, no notice of termination thereof nor any abatement shall be effective unless Mortgagee has received the aforesaid notice and has failed to cure the subject default within the same time period allowed Landlord under the Lease. It is understood that the abatement provisions of this Section relate to abatements by reason of Landlord's default and do not apply to provisions of the Lease whereby Tenant has the automatic right to abate rentals such as, for example, abatement upon casualty or condemnation.

6. Tenant covenants and acknowledges that, except for the Right of First Refusal as provided in Section 57(a) of the Lease with respect to Tenant's right of first refusal to purchase the Landlord's interest in the "Demised Premises" and/or the "Shopping Center" (as those terms are defined in the Lease) ("*Right of First Refusal*"), Tenant has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Demised Premises or the Shopping Center, or any portion thereof or any interest therein. Tenant hereby acknowledges and agrees that the Right of First Refusal is hereby acknowledged to be subject and subordinate to the Mortgage. Notwithstanding the foregoing, the Right of First Refusal shall remain in effect, but shall not apply to any transfer of the Demised Premises or the Shopping Center in connection with a foreclosure or other transfer pursuant to the Mortgage.

7. Neither the Mortgage nor any other security instrument executed in connection therewith shall encumber or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed by or for Tenant or its subtenants or licensees on the aforementioned property regardless of the manner or mode of attachment thereof.

8. Any notices of communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, or by any recognized overnight courier with proof of delivery slip (a) if to Mortgagee, at the address of Mortgagee as hereinabove set forth or at such other address

UNOFFICIAL COPY

Loan No. 526913:11

or persons as Mortgagee may designate by notice in the manner herein set forth, or (b) if to Tenant, at the address of Tenant as hereinabove set forth, with duplicate copies to Allan N. Rauch, Esq., c/o Bed Bath & Beyond Inc., 650 Liberty Avenue, Union, New Jersey 07083, and W. John Park, Esq., c/o Cole, Schotz, Meisel, Forman & Leonard, P.A., Court Plaza North, 25 Main Street, P.O. Box 800, Hackensack, New Jersey 07601, or such other address or persons as Tenant may designate by notice in the manner herein set forth. All notices given in accordance with the provisions of this Section shall be effective upon receipt (or refusal of receipt) at the address of the addressee.

9. This Agreement shall bind and inure to the benefit of and be binding upon and enforceable by the parties hereto and their respective successors, assigns, and sublessees.

10. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

11. This Agreement and the covenants herein contained are intended to run with and bind all lands affected thereby

[signatures follow on next page]

UNOFFICIAL COPY

Loan No. 526913:11

IN WITNESS WHEREOF, the parties hereto have duly executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

MORTGAGEE:

ATTEST:

JOHN HANCOCK LIFE INSURANCE COMPANY
(U.S.A.), a Michigan corporation

By: Justin Lata
 Name: JUSTIN LATA
 Title: INVESTMENT OFFICER

STATE OF _____)
) : ss.
 COUNTY OF _____)

On this ____ day of _____, 2012, before me personally came _____ to me known, who being by me duly sworn, did depose and say that he/she is the _____ of JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.), the corporation described in and which executed the above instrument and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

 Notary Public

My Commission Expires:

UNOFFICIAL COPY

Loan No. 526913:11

IN WITNESS WHEREOF, the parties hereto have duly executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

MORTGAGEE:

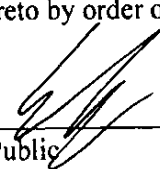
ATTEST:

JOHN HANCOCK LIFE INSURANCE COMPANY
(U.S.A.), a Michigan corporation

 By: _____
 Name: _____
 Title: _____

STATE OF Illinois)
) : ss.
 COUNTY OF Cook)

On this 10th day of December, 2012, before me personally came Justin Lata to me known, who being by me duly sworn, did depose and say that he/she is the an Investment Officer of JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.), the corporation described in and which executed the above instrument and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.



 Notary Public

My Commission Expires: 11/17/14



UNOFFICIAL COPY

Loan No. 526913:11

TENANT:

ATTEST:

BED BATH & BEYOND OF LINCOLN PARK INC., an Illinois corporation

Alan M. Freeman
Assistant Secretary

By: *Allan N. Rauch*
Allan N. Rauch *LR*
Legal & General Counsel and Authorized
Signatory *MR*

STATE OF)
) : ss
COUNTY OF)

On this 5 day of December, 2012, before me personally came Allan N. Rauch, to me known, who being by me duly sworn, did depose and say that he/she is the Vice President, Legal & General Counsel and Authorized Signatory of Bed Bath & Beyond of Lincoln Park, Inc., the corporation described in and which executed the above instrument and that he signed his name thereto by order of the Board of Directors of said corporation.

Kathleen C. Ferenczak
Notary Public

My Commission Expires:

KATHLEEN C. FERENCZAK
NOTARY PUBLIC OF NEW JERSEY
COMMISSION EXPIRES NOVEMBER 2 2013

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Loan No. 526913:11

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

Property of Cook County Clerk's Office

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Loan No. 526913:11

LANDLORD:

WITNESS:

CMR LIMITED PARTNERSHIP, an Illinois limited partnership

By: _____
Name: _____
Title: _____

STATE OF IL)

COUNTY OF Lake) : ss.

On this 5th day of December, 2012, before me personally came Charles R. Malk to me known, who being by me duly sworn, did depose and say that he/she is the President of General Partner of CMR Limited Partnership, the company described in and which executed the above instrument and that he/she signed his/her name thereto by order of the President of said company.



Lolly Blank
Notary Public

My Commission Expires:

07-23-13

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Loan No. 526913:11

EXHIBIT A**DESCRIPTION OF LAND****PARCEL 1:**

LOTS 1 TO 6 AND 21 TO 26, ALL INCLUSIVE, IN BLOCK 6 IN THE SUBDIVISION OF LOTS 1 AND 2 OF BLOCK 8 IN SHEFFIELD'S ADDITION TO CHICAGO, SITUATED IN THE WEST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 4, 5, 6, 7, 8, 9 AND THAT PART OF LOT 3 LYING NORTH AND NORTHWESTERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF SHEFFIELD AVENUE, 244.47 FEET SOUTH OF THE INTERSECTION OF SAID WEST LINE OF SHEFFIELD AVENUE WITH THE SOUTHWESTERLY LINE OF CLYBOURN AVENUE THENCE WEST AT RIGHT ANGLES TO SAID WEST LINE OF SHEFFIELD AVENUE 81.58 FEET MORE OR LESS TO ITS INTERSECTION WITH A LINE DRAWN PARALLEL TO AND 164.47 FEET SOUTHEASTERLY OF THE SOUTHEASTERLY LINE OF WILLOW STREET AS NOW OCCUPIED; THENCE SOUTHWESTERLY ALONG SAID PARALLEL LINE 91.71 FEET MORE OR LESS TO ITS INTERSECTION WITH THE NORTHEASTERLY LINE OF MARCEY STREET; ALL IN BLOCK 9 IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 8 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE SOUTH 1/2 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Tax Numbers: 14-32-418-002-0000
 14-32-418-004-0000
 14-32-420-001-0000
 14-32-420-003-0000
 14-32-420-004-0000

*1800 N. Clybourn Ave.
 Chicago, IL*