

JFK:md

ARLINGTON HEIGHTS, ILLINOIS  
(KRU) #1337K

Record and return to:

COOK COUNTY, ILLINOIS

June F. Kaplan, Esq.

Real Estate Department 1990 OCT 16 PM 2:08

90506747

Toys "R" Us, Inc.

461 From Road

Paramus, NJ 07652

EXHIBIT D

Subordination Non-Disturbance and Attornment Agreement

1990

THIS AGREEMENT, made as of the 12<sup>th</sup> day of October, 1990, between NBD Chicago Bank, an Illinois banking corporation having an office at 307 N Michigan Ave, Chicago, Ill (hereinafter called "Mortgagee") and TOYS "R" US, INC., a Delaware corporation having an office at 461 From Road, Paramus, New Jersey 07652, (hereinafter called "Tenant").

WITNESSETH

WHEREAS, Mortgagee is the holder of a mortgage dated October 12, 1990 and recorded on October 16, 1990 as Document 90506747 (hereinafter called the "Mortgage") covering a parcel of land owned by La Salle National Trust, N.A. (as successor trustee to La Salle National Bank), as Trustee under Trust Agreement dated October 1, 1961 and known as Trust No. 28684 (hereinafter called "Landlord") together with the improvements (to be) erected thereon (said parcel of land and improvements thereon being hereinafter called the "Land"); and

WHEREAS, by a certain lease heretofore entered into between Landlord and Tenant dated as of October 2, 1990 (hereinafter called the "Lease"), Landlord leased to Tenant a portion of the Land, to wit, the premises outlined as "Leased Premises" on Exhibit B annexed hereto and made a part hereof, together with the building or portion thereof located thereon (said premises being hereinafter called the "Demised Premises"); and

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

WHEREAS, the Lease provides that the Lease shall become subject and subordinate to a first mortgage of the fee interest of the Land if and when a nondisturbance 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 the holder of the Mortgage.

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 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, subject, however, to the provisions of this Agreement.

This instrument prepared by:

June F. Kaplan  
June F. Kaplan

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3. Tenant certifies that the Lease is presently in full force and effect and unmodified and Tenant as of this date has no knowledge of any charge, lien or claim of offset under the Lease.

4. Mortgagee agrees that so long as Tenant is not in default of the terms and conditions of the Lease and so long as same shall be in full force and effect:

(a) Unless required by law, 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 Demised 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 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 Demised Premises, 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;

(c) Provided Tenant gives written assurances to Mortgagee after written request therefor that Tenant will not exercise its rights to terminate the Lease pursuant to Sections 10.10 and 11.02 thereof, all condemnation awards and insurance proceeds paid or payable with respect to the Demised Premises or any other part of the Land and received by Mortgagee shall be applied and paid in the manner set forth in the Lease; and

(d) Neither the Mortgage nor any other security instrument executed in connection therewith shall cover 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 unless title to such items would, pursuant to the terms of the Lease, revert to Landlord at the end of the term of the Lease.

5. Upon execution hereof and from time to time upon written request by Mortgagee (but not more than once each calendar year), Tenant shall certify to Mortgagee:

(a) It has accepted possession of the Demised Premises fully and without reservation pursuant to the terms of the Lease and is currently in full occupancy thereof;

(b) All improvements and space required to be furnished according to the Lease have been completed in all respects;

(c) Landlord has fulfilled all of its duties of an inducement nature under the Lease;

(d) The commencement and expiration date of the term of the Lease and the date on which Tenant's obligations to pay rent commenced;

(e) The Lease is in full force and effect and has not been modified, altered or amended;

(f) Neither Tenant nor Landlord (to the best of the knowledge of Tenant) is in default under the Lease;

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(g) Tenant has no offsets or credits against rentals due or to become due under the Lease;

(h) The full monthly rental prescribed in the Lease is being paid on a current bases in advance on the date for payment thereof specified in the Lease, and no rentals have been prepaid except as provided by the terms of the Lease; and

(i) Tenant has not notice of a prior assignment, hypothecation or pledge of the rents of the Lease; provided, however, that Tenant may note any exceptions to the foregoing on such certification.

6. If Mortgagee or any future holder of the Mortgage shall become the owner of the Land by reason of foreclosure of the Mortgage or otherwise, or if the Land 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 Land, 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 options 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 (i) be bound by any rent or additional rent which Tenant might have paid for more than one month in advance to any prior landlord (including Landlord); or (ii) be bound by any amendment or modification of the Lease made without its consent which would (x) reduce fixed annual rent, or (y) reduce any other monetary obligation of Tenant under the Lease.

7. Any notices or communications given under the agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to Mortgagee, at the address of Mortgagee as hereinabove set forth or at such other address as Mortgagee may designate by notice, or (b) if to Tenant, then in duplicate, under separate cover, one copy attention of the Sr. Vice President - Real Estate of Tenant, at the address of Tenant as hereinabove set forth or at such other address as Tenant may designate by notice. During the period of any postal strike or other interference with the mail, personal delivery, overnite delivery by a nationally recognized delivery service or transmission via facsimile shall be substituted for registered or certified mail. No default notice given by Tenant under the Lease shall be effective as against Mortgagee unless a duplicate copy thereof has been given to Mortgagee.

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

# UNOFFICIAL COPY

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

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

11. The parties acknowledge that the effective date of this Agreement shall be the date of recording of the Mortgage.

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

Attest:

By: [Signature]

12, 7. Secretary

[Corporate Seal]

By: [Signature]

Asst. Vice President

(Mortgagee)

Attest:

TOYS "R" US, INC.

By: [Signature]

Michael L. Tumolo  
Assistant Secretary

[Corporate Seal]

By: [Signature]

Michael Paul Miller  
Sr. Vice President-  
Real Estate

(Tenant)

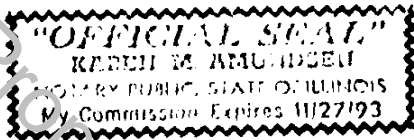
# UNOFFICIAL COPY

STATE OF IL )  
COUNTY OF Cook ) ss:

On this the 12th day of Oct, 1990, before, the undersigned officer, personally appeared David C. Weinstock and Nell D. Lohm who acknowledged themselves to be the VP and Asst. Secy, respectively, of the NPD Chicago SA, Inc. an Illinois corporation and that they as such VP and Asst. Secy, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by themselves as VP and Asst. Secy.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]



Karen M. Amundsen  
Notary Public

STATE OF NEW JERSEY )  
COUNTY OF BERGEN ) ss:

On this the \_\_\_\_\_ day of October, 1990, before, the undersigned officer, personally appeared Michael Paul Miller and Michael L. Tumolo, who acknowledged themselves to be the Senior Vice President - Real Estate and Assistant Secretary, respectively, of TOYS "R" US, INC., a Delaware corporation and that they as such Senior Vice President - Real Estate and Assistant Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by themselves as Senior Vice President - Real Estate and Assistant Secretary.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

\_\_\_\_\_  
Notary Public

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# UNOFFICIAL COPY

STATE OF )  
COUNTY OF ) ss:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 1990, before, the undersigned officer, personally appeared \_\_\_\_\_ and \_\_\_\_\_, who acknowledged themselves to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of a \_\_\_\_\_ corporation and that they as such \_\_\_\_\_ and \_\_\_\_\_ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by themselves as \_\_\_\_\_ and \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

\_\_\_\_\_  
Notary Public

STATE OF NEW JERSEY )  
COUNTY OF BERGEN ) ss:

On this the 11th day of October, 1990, before, the undersigned officer, personally appeared Michael Paul Miller and Michael L. Tumolo, who acknowledged themselves to be the Senior Vice President - Real Estate and Assistant Secretary, respectively, of TOMS "R" US, INC., a Delaware corporation and that they as such Senior Vice President - Real Estate and Assistant Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by themselves as Senior Vice President - Real Estate and Assistant Secretary.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

*Johanna Graniero*  
\_\_\_\_\_  
Notary Public

JOHANNA GRANIERO  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Sept. 18, 1991

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# UNOFFICIAL COPY

EXHIBIT A  
THE LAND  
LEGAL DESCRIPTION

Lot 1 of Northgate Shopping Center Subdivision of Part of the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of Section 17, Township 42 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois.

**EXCEPT:**

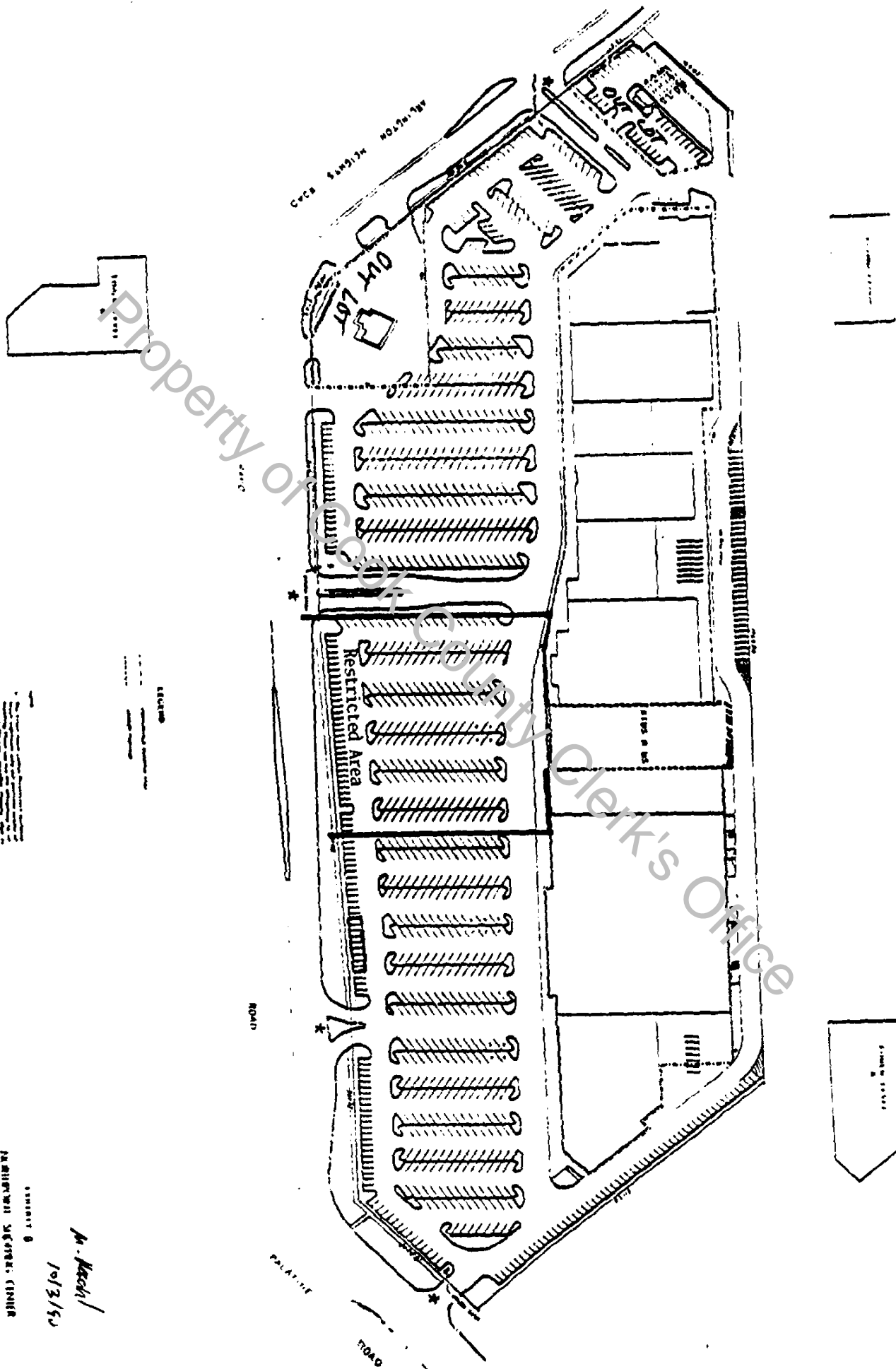
That part of Lot 1 of Northgate Shopping Center Subdivision, being a Subdivision of part of the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian, described as follows: Commencing at the Northwest corner of said Lot 1 thence Southward along the Westerly line of said Lot 1, being the Easterly line of Arlington Heights Road; South 1 degree 50 minutes 41 seconds East, a distance of 73.57 feet; thence South 00 degrees 17 minutes 45 seconds East, a distance of 470.00 feet; thence South 13 degrees 57 minutes 59 seconds East a distance of 40.00 feet; thence South 33 degrees 05 minutes 01 seconds East, a distance of 37.43 feet to the point of beginning; thence South 33 degrees 05 minutes 01 seconds East, a distance of 7.57 feet; thence Southeasterly along a line being 50.00 feet Northeasterly of and parallel with the centerline of Rand Road, South 48 degrees 24 minutes 05 second East, a distance of 387.47 feet; thence South 50 degrees 47 minutes 20 seconds East, a distance of 48.01 feet; thence North 48 degrees 24 minutes 05 seconds West, a distance of 444.74 feet to the point of beginning, all in Cook County, Illinois.

*PTN Nos. 03-17-301-019  
03-17-301-017  
03-17-301-020  
03-17-301-021  
03-17-301-022*

*Address:  
Northeast Corner Rand +  
Palatine Roads, Arlington Heights*

Cook County Clerk's Office

90506747



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M. Kachil  
10/3/50

PROPERTY OF  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C.