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1 of 5 Documents (GIS)
Order No. H449-1891 (COMMONWEALTH LAND TITLE INSURANCE COMPANY)

302 10063017.DTE

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THE SUKITOMO TRUST & BANKING CO., LTD.,
Mortgagee

305

AND

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THE HEINAN-MARCUS GROUP, INC.,

Tenant

DEPT-01 RECORDING

T#2222 TRAN 2948 07/25/90 14:33:00

#1275 # B * -90-358287

COOK COUNTY RECORDER

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SUBORDINATION, NON-DISTURBANCE
AND ATTORNEY AGREEMENT

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Dated: As of July 19, 1990

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Location: 737 North Michigan Avenue
Chicago, Illinois

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PREPARED BY AND AFTER THIS INSTRUMENT IS FILED FOR
RECORD (OR) RETURN TO:

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Hattie Fowler
280 Park Avenue
New York, New York 10017

Attention: Alan S. Weil, Esq.

TAX PARCEL NOS. 17-10-200-067; 17-10-200-069 through 17-10-200-086, BOTH INCL.

-90-358287

C/N: 10063.017 10063017.DTE

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SUBORDINATION, NON-DISTURBANCE AND ATTACHMENT AGREEMENT (Lease)

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19th July

THIS AGREEMENT made as of the 19th day of July, 1990, between THE SUMITOMO TRUST & BANKING CO., LTD., a Japanese banking corporation acting through its New York Branch, having an office at 527 Madison Avenue, New York, New York (hereinafter referred to as Mortgagee), and THE NEIMAN-MARCUS GROUP, INC., a Delaware corporation having an address at Main and Ervay, Dallas, Texas 75201 (hereinafter referred to as Tenant);

W I T N E S S E T H:

WHEREAS Mortgagee is the present owner and holder of the mortgage described in EXHIBIT A attached hereto (hereinafter referred to as the Mortgage) covering certain premises described in EXHIBIT B attached hereto (hereinafter referred to as the Premises) and of the note, bond or other obligation described in EXHIBIT C attached hereto secured thereby (hereinafter referred to as the Note);

WHEREAS Tenant is the holder of a leasehold estate in a portion of the Premises under and pursuant to the provisions of a certain lease more particularly described in EXHIBIT D attached hereto (hereinafter referred to as the Lease); and

WHEREAS Tenant has agreed to subordinate the Lease to the Mortgage ^{lien of the} and to the lien thereof and Mortgagee has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of Ten Dollars (\$10) and other good and valuable consideration, the receipt of which is hereby acknowledged, Mortgagee and Tenant hereby covenant and agree as follows:

^{lien of the} 1. Tenant agrees that the Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the Mortgage ~~and to the lien thereof~~ and to all renewals, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby, with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. Mortgagee agrees that if any action or proceeding is commenced by Mortgagee for the foreclosure of the Mortgage or the sale of the Premises, Tenant shall not be named as a party therein, and the sale of the Premises in any such action or proceeding and the exercise by Mortgagee of any of its other rights under the Note or the Mortgage shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (i) the term of the Lease shall have commenced pursuant to the provisions thereof, (ii) Tenant shall be in possession of the premises demised under the Lease, (iii) the Lease shall be in full force and effect and (iv) Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed.

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3. Tenant agrees that if Mortgagee shall become the owner of the Premises by reason of the foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Mortgagee and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event Tenant agrees to attorn to Mortgagee and Mortgagee agrees to accept such attornment, provided, however, that ~~the provisions of the Mortgage shall govern with respect to the disposition of any casualty insurance proceeds or condemnation awards and~~ Mortgagee shall not be (i) obligated to complete any construction work required to be done by Landlord (as hereinafter defined) pursuant to the provisions of the Lease or to reimburse Tenant for any construction work done by Tenant, (ii) liable for any accrued obligation of Landlord, or for any act or omission of Landlord, whether prior to or after such foreclosure or sale, (iii) required to make any repairs to the Premises or to the premises demised under the Lease required as a result of fire, or other casualty or by reason of condemnation unless Mortgagee shall be obligated under the Lease to make such repairs and shall have received sufficient casualty insurance proceeds or condemnation awards to finance the completion of such repairs, (iv) required to make any capital improvements to the Premises or to the premises demised under the Lease which Landlord may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment of the premises demised under the Lease, or (v) subject to any offsets or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which Mortgagee shall become the owner of the Premises.

4. Tenant shall not, without obtaining the prior written consent of Mortgagee, (i) enter into any agreement amending, modifying or terminating the Lease, (ii) prepay any of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of the due dates thereof, (iii) voluntarily surrender the premises demised under the Lease or terminate the Lease without cause or shorten the term thereof, or (iv) assign the Lease or sublet the premises demised under the Lease or any part thereof other than pursuant to the provisions of the Lease; and any such amendment, modification, termination, prepayment, voluntary surrender, assignment or subletting, without Mortgagee's prior consent, shall not be binding upon Mortgagee.

5. Tenant hereby represents and warrants to Mortgagee that as of the date hereof (i) Tenant is the owner and holder of the tenant's interest under the Lease, (ii) the Lease has not been modified or amended, except as specifically set forth in Exhibit C, (iii) the Lease is in full force and effect and the term thereof commenced on 11/5, 1982, pursuant to the provisions thereof, (iv) the premises demised under the Lease have been completed and Tenant has taken possession of the same on a rent paying basis, (v) neither Tenant nor Landlord is in default under any of the terms, covenants or provisions of the Lease and Tenant to the best of its knowledge knows of no event which but for the passage of time or the giving of notice or both would constitute an event of default by Tenant or Landlord under the Lease, (vi) neither Tenant nor Landlord has commenced any action or given or received any notice for the purpose of terminating the Lease, (vii) all rents, additional rents and other sums due and payable under the Lease have been paid in full and no rents, additional rents or other sums payable under the Lease have been paid for more than one (1) month in advance of the due dates thereof, (viii) there are no offsets or defenses to the payment of the rents, additional rents, or other sums payable under the Lease, and (ix) Landlord has satisfied all of its obligations with respect to Landlord and Tenant Work, including, but not limited to, the payment of any Landlord's allowance or contribution.

6. Tenant shall notify Mortgagee of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease or abate the

except for a default by Landlord in its obligations under the Lease and subsequent org. under taking relating to the quality of the building provided by Landlord

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rents, additional rents or other sums payable thereunder, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Mortgagee shall have received notice of the default giving rise to such cancellation and shall have failed within sixty (60) days after receipt of such notice to cure such default, or if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and to thereafter diligently pursue any action necessary to cure such default.

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7. Neither the Mortgagee nor its nominee, successors or assigns shall have any obligation to perform any of the obligations of Landlord under the Lease, unless and until the Mortgagee or its nominee, successors or assigns (as the case may be) shall acquire title to, or take possession of, the Premises and, further, from and after the date on which Mortgagee or its nominee, successors or assigns (as the case may be) shall so acquire title to, or take possession of, the Premises, Mortgagee, or its nominee, successors or assigns (as the case may be) shall have no liability to Tenant pursuant to the Lease, this Agreement or otherwise, beyond their respective interests in the Premises. Tenant agrees that with respect to any money judgment which may be obtained or secured by Tenant against Mortgagee or its nominee, successors or assigns (as the case may be) on account of claims arising under the Lease, this Agreement or any other documents or instruments executed in connection with the Premises, Tenant shall look solely to the estate or interest owned by Mortgagee or its nominee, successors or assigns (as the case may be) in the Premises, or any portion thereof, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Mortgagee or its nominee, successors or assigns (as the case may be). Without limiting the generality of the foregoing, neither the Mortgagee, nor its nominee, successors or assigns shall have any obligations or liabilities to the Tenant hereunder or under the Lease beyond the obligations and liabilities of Landlord under the Lease (to the extent that such obligations and liabilities are to be assumed by Mortgagee or its nominee, successors or assigns (as the case may be) under this Agreement).

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8. All notices, consents and other communications pursuant to the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, and shall be deemed given when postmarked and addressed as follows:

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If to Mortgagee:

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The Sunitomo Trust & Banking Co., Ltd.
New York Branch
527 Madison Avenue
New York, New York 10022

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Attention: Albert C. Tew II

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with a copy to:

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Battle Fowler
280 Park Avenue
New York, New York 10017

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Attention: Alan S. Weil, Esq.

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12 to Tenant:

With a copy to

The Neiman-Marcus Group, Inc.
Main and Ervey 27 Baylis St
Dallas, Texas 75201

The Neiman Marcus Group, Inc.
27 Bayliss Street
Chestnut Hill, MA 02167

Attention: President

Attention: Real Estate Counsel

Each party may designate a change of address by notice to the other party, given at least fifteen (15) days before such change of address is to become effective.

9. This Agreement shall be binding upon and inure to the benefit of Mortgagee and Tenant and their respective successors and assigns.

10. The term "Mortgagee" as used herein shall include the successors and assigns of Mortgagee and any person, party or entity which shall become the owner of the Premises by reason of a foreclosure of the Mortgage or the acceptance of a deed of assignment in lieu of foreclosure or otherwise. The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease. The term "Premises" as used herein shall mean the Premises, the improvements now or hereafter located thereon and the estates therein encumbered by the Mortgage.

11. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

12. This Agreement shall be governed by and construed under the laws of the State in which the Premises are located.

IN WITNESS WHEREOF, Mortgagee and Tenant have duly executed this Agreement as of the date first above written.

THE SUNAMOTO TRUST & BANKING CO., LTD.,
a Japanese banking corporation

By:

Joseph M. Kelley
Name: Joseph M. Kelley
Title: Vice President

THE NEIMAN-MARCUS GROUP, INC., a
Delaware corporation

By:

Barbara Mayer
Name: Barbara Mayer
Title: Vice President
Real Estate - Legal

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191 STATE OF New York)
192) ss.:
193 COUNTY OF New York)

194 I, David Tenzer, a Notary Public, in and for said County, in
195 the state aforesaid, DO CERTIFY THAT Josiah M. Kelley, the Vice President
196 of THE SUMITOMO TRUST & BANKING CO., LTD., a Japanese bank acting through its
197 New York branch, who is personally known to me to be the person whose name is
198 subscribed to the foregoing instrument as such vice president,
199 appeared before me this day in person and acknowledged that he signed and
200 delivered the said instrument as his own free and voluntary act and as the
201 free and voluntary act of The Sumitomo Trust & Banking Co., Ltd., for the uses
202 and purposes therein set forth.

203 Given under my hand and notarial seal this 20th day of July,
204 1990.

205 David Tenzer
206 Notary Public

[SEAL]

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208 My Commission Expires:

DAVID TENZER
Notary Public, State of New York
No. 4847888
Qualified in New York County
Commission Expires February 27, 1991

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Commonwealth

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STATE OF Massachusetts
COUNTY OF Middlesex ss.:

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I, MARSHAL KAZANTIAN, a Notary Public, in and for said County, in the state aforesaid, DO CERTIFY THAT MARK KAPLAN, the VICE PRESIDENT of THE NEIMAN-MARCUS GROUP, INC., who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such VICE PRESIDENT, ~~appeared~~ appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of The Neiman-Marcus Group, Inc., for the uses and purposes therein set forth.

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Given under my hand and notarial seal this 10th day of JULY, 1990.

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Marshal Kazantian
Notary Public

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(SEAL)

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My Commission Expires

MARSHAL M. KAZANTIAN
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS
MY COMMISSION EXPIRES
NOVEMBER 19, 1993

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EXHIBIT A

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1. The Mortgage: Mortgage dated as of July 18, 1990, in the principal sum of \$80,000,000 given by LaSalle National Bank, not personally but as Trustee under Trust Agreement dated August 15, 1979 and known as Trust Number 101565 to The Sumitomo Trust & Banking Co., Ltd. covering the fee estate in the Premises.

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2. The Note: Note dated as of July 18, 1990, in the principal sum of \$80,000,000 given by LaSalle National Bank, not personally but as Trustee under Trust Agreement dated August 15, 1979 and known as Trust Number 101565 and Chicago Superior Associates to The Sumitomo Trust & Banking Co., Ltd.

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EXHIBIT B

(Description of Premises)

PARCEL 1:

THAT PART OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL TAKEN AS ONE TRACT, AND BOUNDED AND DESCRIBED AS FOLLOWS:

243 BEGINNING AT THE SOUTHWEST CORNER OF LOT 3 IN LILL'S CHICAGO BREWERY COMPANY'S
244 SUBDIVISION IN BLOCK 54 IN KINSIE'S ADDITION TO CHICAGO, BEING A SUBDIVISION
245 IN SAID SECTION 10; THENCE NORTH 0 DEGREES 10 MINUTES 52 SECONDS EAST ALONG
246 THE WEST LINE OF SAID LOT 3, BEING ALSO THE EAST LINE OF NORTH MICHIGAN
247 AVENUE, A DISTANCE OF 121.60 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH
248 LINE OF THE NORTH 2.20 FEET OF SAID LOT 3; THENCE SOUTH 89 DEGREES 54 MINUTES
249 30 SECONDS EAST ALONG SAID SOUTH LINE A DISTANCE OF 64.20 FEET TO A POINT ON
250 THE EAST LINE OF SAID LOT 3; THENCE SOUTH 0 DEGREES 10 MINUTES 52 SECONDS WEST
251 ALONG SAID EAST LINE A DISTANCE OF 8.00 FEET TO THE POINT OF INTERSECTION WITH
252 THE SOUTH LINE OF THE NORTH 10.20 FEET OF LOT "A" IN LILL'S CHICAGO BREWERY
253 COMPANY'S SUBDIVISION AFORESAID; THENCE SOUTH 89 DEGREES 54 MINUTES 30 SECONDS
254 EAST ALONG SAID SOUTH LINE A DISTANCE OF 45.80 FEET TO THE EAST LINE OF THE
255 WEST 45 FEET 9 1/2 INCHES OF SAID LOT "A"; THENCE NORTH 0 DEGREES 10 MINUTES
256 52 SECONDS EAST ALONG SAID EAST LINE A DISTANCE OF 10.20 FEET TO A POINT ON
257 THE NORTH LINE OF SAID LOT "A", BEING ALSO THE SOUTHERLY TERMINUS OF A 15 FOOT
258 PUBLIC ALLEY; THENCE SOUTH 89 DEGREES 54 MINUTES 30 SECONDS EAST 15.00 FEET
259 ALONG THE NORTH LINE OF LOT "A" TO THE POINT OF INTERSECTION WITH THE
260 SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 1 IN WARE'S RESUBDIVISION OF LOT 5
261 IN LILL'S CHICAGO BREWERY COMPANY'S RESUBDIVISION OF LOTS 1 AND 2 IN LILL'S
262 CHICAGO BREWERY COMPANY'S SUBDIVISION IN BLOCK 54 AFORESAID; THENCE NORTH 0
263 DEGREES 10 MINUTES 52 SECONDS EAST ALONG SAID EXTENDED LINE AND SAID WEST LINE
264 OF LOT 1, BEING ALSO THE EAST LINE OF A 15 FOOT PUBLIC ALLEY, A DISTANCE OF
265 149.96 FEET TO THE NORTHWEST CORNER OF LOT 1 IN WARE'S RESUBDIVISION
266 AFORESAID; THENCE SOUTH 89 DEGREES 47 MINUTES 58 SECONDS EAST ALONG THE NORTH
267 LINE OF LOTS 1, 2, 3 AND 4 OF WARE'S RESUBDIVISION AND ALONG THE NORTH LINE OF
268 LOTS 11, 12, 13 AND 14 IN LILL'S CHICAGO BREWERY COMPANY'S RESUBDIVISION
269 AFORESAID, BEING ALSO THE SOUTH LINE OF EAST CHICAGO AVENUE, A DISTANCE OF
270 175.11 FEET TO THE NORTHEAST CORNER OF LOT 14 IN LILL'S CHICAGO BREWERY
271 COMPANY'S RESUBDIVISION AFORESAID; THENCE SOUTH 0 DEGREES 10 MINUTES 52
272 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 14 A DISTANCE OF 130.00 FEET TO
273 THE SOUTHEAST CORNER OF SAID LOT; THENCE NORTH 89 DEGREES 47 MINUTES 58
274 SECONDS WEST ALONG THE SOUTH LINE OF LOTS 12, 13 AND 14 OF LILL'S CHICAGO
275 BREWERY COMPANY'S RESUBDIVISION, BEING ALSO THE NORTH LINE OF A PUBLIC ALLEY A
276 DISTANCE OF 65.05 FEET TO THE EASTERLY TERMINUS OF AN ALLEY VACATED BY
277 DOCUMENT NO. 22595871, RECORDED JANUARY 16, 1974; THENCE SOUTH 0 DEGREES 10
278 MINUTES 52 SECONDS WEST ALONG SAID TERMINAL LINE A DISTANCE OF 16.25 FEET;
279 THENCE CONTINUING SOUTH 0 DEGREES 10 MINUTES 52 SECONDS WEST ALONG THE EAST
280 LINE OF A 10 FOOT PRIVATE ALLEY LYING EAST AND ADJOINING LOTS 9 AND 10 IN
281 LILL'S CHICAGO BREWERY SUBDIVISION AFORESAID, A DISTANCE OF 126.92 FEET TO THE
282 SOUTHERLY TERMINUS OF SAID 10 FOOT PRIVATE ALLEY; THENCE WEST ALONG SAID
283 TERMINAL LINE AND ALONG THE SOUTH LINE OF LOTS 3 TO 10 OF LILL'S CHICAGO
284 BREWERY SUBDIVISION AFORESAID, BEING ALSO THE NORTH LINE OF EAST SUPERIOR
285 STREET, A DISTANCE OF 235.06 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3, BEING
286 THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

288 EASEMENT AND OTHER RIGHTS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL ONE AS
289 CREATED BY DECLARATION OF EASEMENTS AND AGREEMENTS DATED JUNE 17, 1981 AND
290 RECORDED JULY 27, 1981 AS DOCUMENT NO. 28780176 OVER AND UPON THAT PROPERTY
291 LABELED 'VEHICULAR MANUEVERING AREA' ON EXHIBIT J TO SAID DECLARATION. IN COOK
292 COUNTY, ILLINOIS.

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EXHIBIT C

(Description of Lease)

Restated Lease Agreement dated as of January 16, 1984, between LaSalle National Bank, not personally but as Trustee under Trust Agreement dated August 15, 1979 and known as Trust Number 101565, as Landlord, and Carter Hawley Hale Stores, Inc., as Tenant, as assigned pursuant to that certain Assignment of Lease and Assumption Agreement dated as of August 27, 1987 between Carter Hawley Hale Stores, Inc., as assignor and The Heiman-Marcus Group, Inc., as assignee.

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C/M: 10043.017 10043017.DTE

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