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95751278

Pre-Closing

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

PETER A. SARASEK, ESC.
NILSON & McILVAINE
SUITE 3700
500 W. MADISON ST.
CHICAGO IL 60661

DEPT-01 RECORDING \$37.00
140012 TRAN 7296 11/02/95 12:16:00
40251 CG 95-751278
COOK COUNTY RECORDER

17
7550996 D1

Space Above This Line for Recorder's Use

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, is made this 23rd day of August, 1995 by Bed Bath & Beyond of Lincoln Park Inc., an Illinois Corporation having its principal office and place of business located at 715 Morris Avenue Springfield, New Jersey 07081 ("Tenant"), and John Hancock Mutual Life Insurance Company, having its principal place of business located at 200 Clarendon Street, John Hancock Place, P.O. Box 111, Boston, MA 02117 ("Lender"), with reference to the following facts:

3700

RECITALS

A. On December 13, 1993, Cole Taylor Bank as Trustee under Trust Agreement dated October 27, 1993, and known as Trust # 934188 ("Landlord") and Tenant entered into a certain lease ("Lease") covering certain space ("Premises") in the building located at 1800 Clybourn, which property is more particularly described in the Mortgage (as hereinafter defined) ("Property");

and is more particularly described on Exhibit A hereto

B. Lender has agreed to make a loan ("Loan") to Landlord, which Loan is to be evidenced by a note and secured, inter alia, by a first mortgage in favor of Lender and upon the terms and conditions described therein, which shall be recorded in the Official Records of Cook County, Illinois, said mortgage and all amendments, modifications, renewals, substitutions, extensions, consolidations and replacements are hereinafter collectively referred to as "Mortgage");

C. It is a condition precedent to obtaining the Loan that (i) the Mortgage unconditionally be and remain at all times a first lien or charge upon the Property prior and superior to the Lease; (ii) Tenant specifically and unconditionally subordinate the Lease to the lien or charge of the Mortgage and (iii) Tenant attorn to Lender and its successor and assigns in the event of a foreclosure or other proceeding to enforce the mortgage;

NOW THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Lender to enter into the above-referenced Loan, Lender and Tenant hereby agree as follows:

FNMA LKJONSCLIENT-1109710001010ESTOPPELABEDBATH.SUB - 8/15/95 (9:37 am)

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BOX 333-CTI

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1. Subordination. The Mortgage is and shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the Lease, the leasehold estate created thereby and all rights and privileges of Tenant or any other tenant thereunder, and the Lease, the leasehold estate created thereby and all rights and privileges of Tenant or any other tenant thereunder are hereby unconditionally subjected and made subordinate to the lien or charge of the Mortgage.

2. Lender's Exercise of Remedies. In the event of (a) the institution of any foreclosure, trustee's sale or other like proceeding, (b) the appointment of a receiver for the Landlord or the Property, (c) the exercise of rights to collect rents under the Mortgage or an assignment of rents, (d) the recording by Lender or its successor or assignee of a deed in lieu of foreclosure for the Property, or (e) any transfer or abandonment of possession of the Property to Lender or its successor or assigns in connection with any proceedings affecting Landlord under the Bankruptcy Code, 11 U.S.C. § 101 et seq. (any such foreclosure, recording of a deed in lieu of foreclosure, or transfer or abandonment of the Property referred to in the preceding clauses (a) through (e) is hereinafter called a "Transfer", and Lender or any successor or assignee of Lender taking title to the Property in connection with a Transfer is hereinafter called the "Transferee"), such Transferee shall not: (i) be liable for any damages (including, without limitation, consequential damages) or other relief or be subject to any offsets, defenses or counterclaims of any kind attributable to any act, omission or waiver (express or implied) of Landlord or any prior landlord under the Lease, or otherwise; (ii) be obligated to complete any construction or improvements at the Property, Premises or elsewhere agreed to be done by Landlord or any prior landlord under the Lease, or otherwise, or to reimburse Tenant for any prior construction work done by Tenant, or be subject to any offsets, defenses or counterclaims therefor, (iii) be bound by any prepayment by Tenant of more than one month's installment of rent unless such prepayment has been specifically approved in writing by Lender, or be liable or responsible for any security deposit or other sums which Tenant may have paid under the Lease unless such deposit or other sums have been physically delivered to Transferee, (iv) be bound by any modification of or amendment to the Lease, unless such amendment or modification shall have been approved in writing by Lender, (v) See Rider to Subordination, Non-Disturbance and Attornment Agreement for revised text. ~~(vi) be required after a fire, casualty or condemnation of the Property or Premises to repair or rebuild the same to the extent that such repair or rebuilding requires funds in excess of the insurance or condemnation proceeds specifically allocable to the Premises and arising out of such fire, casualty or condemnation which have actually been received by Transferee, and then only to the extent required by the terms of the Lease, (vii) be responsible to provide any additional space at the Property or elsewhere for which Tenant has any option or right under the Lease, or otherwise, unless Transferee at its option elects to provide the same, and Tenant hereby releases Transferee from any obligation to provide the same, and agrees that Tenant shall have no right to cancel the Lease and shall possess no right to any claim against Transferee as a result of the failure to provide any such additional space, or (viii) be liable for or incur any obligation with respect to any representations or warranties of any nature set forth in the Lease or otherwise, including, but not limited to, representations or warranties relating to any latent or patent defects in construction with respect to the Property or the Premises, Landlord's title or compliance of the Property or Premises with applicable environmental, building, zoning, or other laws, including, but not limited to, the Americans with Disabilities Act and any regulations pursuant thereto.~~

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beyond any applicable grace period

3. Attornment and Non-Disturbance. Except as set forth in Paragraph 2 above, provided (a) Tenant complies with this Agreement, (b) Tenant is not in default under the terms of the Lease and no event has occurred which, with the passage of time or the giving of notice or both, would constitute a default under the Lease, (c) the Lease is in full force and effect, both as of the date Lender files a lis pendens, or otherwise commences a foreclosure action, or at any time thereafter, and (d) ~~Tenant shall be in possession of the Premises,~~ no default under the Mortgage and no proceeding to foreclose the same will disturb Tenant's possession under the Lease and the Lease will not be affected or cut off thereby, and notwithstanding any such foreclosure or other Transfer of the Property to Transferee, the Lease will be recognized as a direct lease from Transferee to Tenant upon the Transfer for the balance of the term thereof.

Tenant shall attorn to Transferee, including Lender if Lender becomes a Transferee, as the landlord under the Lease. Said attornment is subject to the limitation of Transferee's obligations set forth in Paragraph 2 above and shall be effective and self-operative without the execution of any further instruments upon Transferee succeeding to the interest of the landlord under the Lease. Within ten (10) days after receipt of a written request therefor from Transferee, Tenant agrees to provide Transferee a written confirmation of its attornment to Transferee and any other matter set forth in this Agreement. Failure to provide such written confirmation shall, at Transferee's sole option, constitute a default under the Lease, but failure to receive such written confirmation from Tenant shall not derogate from Tenant's obligations to Transferee hereunder.

arising from and after the date of transfer or assignment

4. Miscellaneous.

(a) This Agreement shall inure to the benefit of the parties hereto, their successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Transferee, all obligations and liabilities of Transferee under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Transferee's interest is assigned or transferred, and provided further that the interest of Tenant under this Agreement may not be assigned or transferred except to the extent the assignment of Tenant's interest in the Lease is permitted under the Lease.

(b) Tenant acknowledges that it has notice that the Lease and the rent and all other sums due thereunder have been assigned to the Lender as part of the security for the note secured by the Mortgage and upon written notice from Lender of a default under the Mortgage, Tenant shall pay its rent and all other sums due under the Lease directly to Lender.

(c) See Rider to Subordination, Non-Disturbance and Attornment Agreement for revised text.

~~purchase the Property or the real property of which the Property is a part, or any portion thereof or any interest therein and to the extent that Tenant has had, or hereafter acquires any such right or option, the same is hereby acknowledged to be subject and subordinate to the Mortgage and is hereby waived and released as against Transferee.~~

(d) Anything herein or in the Lease to the contrary notwithstanding, in the event that Transferee shall acquire title to the Property, Transferee shall have no obligation, nor incur any liability, beyond Transferee's then interest in the Property, and Tenant shall look exclusively to such interest

and the proceeds of a sale of the property

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and such proceeds of Transferee in the Property for the payment and discharge of any obligations imposed upon Transferee hereunder or under the Lease, or otherwise, subject to the limitation of Transferee's obligations provided for in Paragraph 2 above.

(e) This Agreement is the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Mortgage, and shall supersede and cancel all other subjection or subordination agreements including, but not limited to, those provisions, if any, contained in the Lease which provide for the subjection or subordination of said Lease to a deed of trust or to a mortgage or mortgages. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

(f) This Agreement shall be deemed to have been made in the state where the Property is located and the validity, interpretation and enforcement of this Agreement shall be determined in accordance with the laws of such state.

(g) In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Agreement, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party.

(h) Any notices or communications required or permitted to be given or made hereunder shall be deemed to be so given or made when in writing and delivered in person or sent by United States registered or certified mail, postage prepaid, or by nationally recognized overnight courier service, directed to the parties at the following addresses or such other addresses as they may from time to time designate in writing:

Lender: John Hancock Mutual Life Insurance Company
Real Estate Investment Group
Attention: Mortgage Investments, T-53
John Hancock Place
P. O. Box 111
Boston, MA 02117
Reference Loan No. _____

Tenant: Warren Eisenberg, President
Bed Bath & Beyond of Lincoln Park Inc.
715 Morris Turnpike
Springfield, N.J. 07081

Notices or communications mailed in the U.S. mail shall be deemed to be served on the third business day following mailing, notices or communication served by hand or by overnight courier shall be deemed served upon receipt.

The parties hereto represent and warrant that their respective signatories to this Agreement have been duly authorized by the Tenant and Lender, as applicable.

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IN WITNESS WHEREOF, this Agreement has been signed and delivered as of the date and year first above set forth.

TEENANT:
 Bed Bath & Beyond of Lincoln Park Inc.
 By: [Signature]
 Its: President
 Duly Authorized

LENDER:
 JOHN HANCOCK MUTUAL LIFE
 INSURANCE COMPANY
 By: [Signature]
 Its: _____
 Duly Authorized

Barry S. Nectow

Landlord hereby consents Section 4.(b) of this Agreement Investment Officer

Landlord:
 Cole Taylor Bank, as Trustee, under Trust
 Agreement dated October 27, 1993, and
 known as Trust # 934189
 By: [Signature]
 Its: Sr. Vice President

STATE OF NEW JERSEY)
) ss
 COUNTY OF ESSEX)

On this 22nd day of August, 1995, before me, the undersigned, a Notary Public in and for the said Essex County, residing therein, duly commissioned and sworn, personally appeared Warren Eisenberg, to me personally known, who by me duly sworn, did say that he ~~she~~ is a President of Bed Bath & Beyond of Lincoln Park Inc., [that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors] and as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

Amanda Chodor
 Notary Public in and for said County of Essex
 My commission expires: AMANDA CHODOR

NOTARY PUBLIC OF NEW JERSEY
 My Commission Expires May 25, 2000

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Commonwealth of Massachusetts
 STATE OF _____)
) SS
 COUNTY OF Suffolk)

On this 15th day of October, 1995, before me, the undersigned, a Notary Public in and for the said County, residing therein, duly commissioned and sworn, personally appeared Benny S. Valdes, to me personally known, who by me duly sworn, did say that he/she is a Investment Officer of John Hancock Mutual Life Insurance Company, [that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors] and as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.



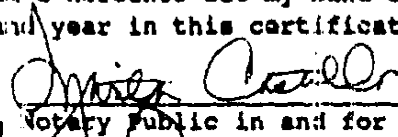
 Notary Public in and for said _____
 My commission expires _____

MY COMMISSION EXPIRES DECEMBER 2 1999

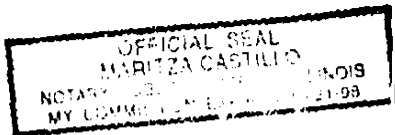
STATE OF Illinois)
) SS
 COUNTY OF Cook)

On this 11th day of October, 1997, before me, the undersigned, a Notary Public in and for the said MARITZA CASTILLO, residing therein, duly commissioned and sworn, personally appeared MARTIN S. EDWARDS, to me personally known, who by me duly sworn, did say that he/she is a Sr. Vice President of Cole Taylor Bank [that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors] and as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.



 Notary Public in and for said _____
 My commission expires: 10-21-98



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Rider to Subordination, Non-Disturbance and Attornment Agreement

Section 2.(v) is revised as follows:

"be bound by any notices, related to Landlord default under Lease or exercise of the right to terminate the Lease, given by Tenant to Landlord unless a copy thereof was simultaneously given to Lender,"

Section 4.(c) is revised as follows:

"Tenant represents that it has no right or option of any nature whatsoever to purchase the property which would apply to (i) an action by the Lender to foreclose, or (ii) a deed in lieu of foreclosure to the Lender or its assignee. Lender agrees to execute the attached letter, regarding the use of casualty insurance proceeds for restoration or rebuilding, at closing."

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John Hancock



John Hancock Place
Post Office Box 211
Boston, Massachusetts 02117
FAX: (617) 572-4000
(617) 572-9999

August _____, 1995

PROPERTY AND CASUALTY GROUP

COLE TAYLOR BANK, not personally
but as Trustee under Trust
Agreement dated October 27, 1993
and known as Trust Number 934188
c/o Malk & Jones
312 East Ohio Street, Suite 300
Chicago, Illinois 60611

Re: John Hancock Loan No. 6916531 GB

Gentlemen:

Reference is made to a mortgage loan in the amount of \$9,000,000.00 made by the undersigned to you, the security for which is a mortgage upon premises located at 1800 N. Clyburn Avenue, Chicago, Illinois ("Premises").

The undersigned, John Hancock Mutual Life Insurance Company, does hereby agree for the benefit of Cole Taylor Bank, not personally but as Trustee under Trust Agreement dated October 27, 1993 and known as Trust Number 934188, that, notwithstanding any provision in the mortgage securing said loan which may be to the contrary, said John Hancock Mutual Life Insurance Company will permit the use of any casualty insurance loss proceeds received by it by reason of insured damage to the improvements on the Premises to be used for restoration and rebuilding, provided that the said loan is not then in default and subject, also, to reasonable regulation by the undersigned with respect to the use of the funds and the disbursement thereof. This agreement of John Hancock Mutual Life Insurance Company applies only to such of the said loss proceeds as may be needed to defray the cost of the restoration and rebuilding and the excess, if any, of such proceeds over the actual cost of said restoration and rebuilding shall be applied upon the then-principal balance of the said loan. This agreement shall not apply to any casualty insurance loss proceeds paid to John Hancock Mutual Life Insurance Company by reason of a loss or damage as to which the casualty insurance company denies liability to a named insured.

This agreement by the undersigned is solely for your benefit and no right or benefit shall accrue to any other successor owner of the mortgaged premises.

This agreement shall bind the undersigned and its successors and assigns in interest as mortgagee under the aforementioned mortgage.

If the loan above referred to is secured by a deed of trust or security deed rather than by the mortgage, all references herein to mortgage shall be construed as referring to such other type of security instrument.

Very truly yours,

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

By: _____
Barry S. Wadsworth
Investment Officer

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EXHIBIT A

LEGAL DESCRIPTION OF SHOPPING CENTER

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.

1800 N. Clybourn Ave
Chicago IL

14-32-418-002

14-32-418-004

14-32-420-001

14-32-420-003

14-32-420-004

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