

# UNOFFICIAL COPY

7822463 Kelly ND

99754016

6908/0066 28 001 Page 1 of 8  
1999-08-09 10:27:21  
Cook County Recorder 67.00



99754016

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 2nd day of August, 1999, by and between **GENERAL ELECTRIC CAPITAL CORPORATION**, a New York corporation ("Mortgagee"), and **BARNES & NOBLE BOOKSELLERS, INC.** (successor by change of name to Barnes & Noble Superstores, Inc.) d/b/a Barnes & Noble ["Lessee"].

### RECITALS:

A. Mortgagee has made or intends to make a loan (the "Loan") to **Arlington, LLC** an Illinois limited liability company ("Borrower"), for the purpose of financing or refinancing the improved real property situated in Cook County, Illinois, being more particularly described in Exhibit A, attached hereto and incorporated herein by reference, such loan to be secured by a Deed of Trust, Assignment of Rents and Leases, and Security Agreement and Fixture Financing Statement (the "Mortgage"), which Mortgage constitutes a lien or encumbrance on the aforesaid property and improvements, located thereon (collectively called the "Project"); and

B. Lessee is the holder of a leasehold estate in and to a portion of the Project (the property which is the subject of such leasehold estate being referred to as the "Demised Premises"), pursuant to the terms of the lease agreement dated November 13, 1996, as amended, (the "Lease") and executed by Lessee and **M & J Wilkow, Ltd.**, as agent for **Arlington, LLC** ("Lessor"); and

C. Lessee and Mortgagee desire to confirm their understandings with respect to the Lease and the Mortgage.

### AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, Lessee and Mortgagee agree and covenant as follows:

1. Non-Disturbance. Mortgagee agrees that it will not disturb the possession of Lessee under the Lease upon any judicial or non-judicial foreclosure of the Mortgage or upon acquiring title to the Project by deed-in-lieu of foreclosure, or otherwise, if the Lease is in full force and effect and Lessee is not then in default under the Lease, beyond any applicable cure period, that Mortgagee will accept the attornment of Lessee thereafter so long as Lessee is not in default under the Lease, beyond any applicable cure period, and that Mortgagee will recognize Lessee's rights set forth in the Lease, subject to and in accordance with the terms hereof as more fully set forth herein.

2. Attornment. If the interests of Lessor in and to the Project are owned by Mortgagee by reason of any deed-in-lieu of foreclosure, judicial foreclosure, sale pursuant to any power of sale or other proceedings brought by it or by any other manner, including but not limited to, Mortgagee's exercise of its rights under any collateral assignment(s) of leases and rents, Mortgagee shall, upon the interest of

**ALL RIGHTS RESERVED**

Lessor under the Lease, Lessor and Lessee shall be bound to each other under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extension thereof duly exercised by Lessee with the same force and effect as if Mortgagee were the Lessor under the Lease; provided, however, that Mortgagee shall not be required to complete the construction of any improvements or otherwise perform the obligations of lessor under the Lease in the event of a foreclosure of the Mortgage prior to full completion of such improvements in which event Tenant should be entitled to terminate the Lease pursuant to the provisions thereof; and Lessee does hereby attorn to Mortgagee, as its lessor, said attornment to be effective and self-operative, without the execution of any further instruments on the part of any parties hereto, immediately upon Mortgagee's succeeding to the interest of Lessor under the Lease; provided, however, that Lessee shall be under no obligation to pay rent to Mortgagee until Lessee receives written notice from Mortgagee that Mortgagee has succeeded to the interest of the Lessor under the Lease or otherwise has the right to receive such rents. The respective rights and obligations of Lessee and Mortgagee upon such attornment, shall be in accordance with the Lease to the extent of the then remaining balance of the term now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference, with the same force and effect as if set forth at length herein.

3. Mortgagee's Obligations. If Mortgagee shall succeed to the interest of Lessor under the Lease, Mortgagee, subject to the provisions of this Paragraph 3, shall be bound to Lessee under all of the terms, covenants and conditions of the Lease; provided, however, that Mortgagee shall not be:

a. Liable in damages for any act or omission of any prior lessor (including Lessor) except if such act or omission continues into the period in which Mortgagee has succeeded to Landlord's interests; or

b. Subject to the offsets or defenses which Lessee might have against any prior lessor (including Lessor) except for breaches of the Lease of which Mortgagee has been give notice pursuant to Paragraph 5 of this Agreement and Tenant's offset rights under Paragraph 4.5 of the Lease; or

c. Bound by any rent or additional rent or advance rent which Lessee might have paid for more than the current month to any prior lessor (including Lessor), and all such rent shall remain due and owing, notwithstanding such advance payment; or

d. Bound by any security or advance rental deposit made by lessee which is not delivered or paid over to Mortgagee and with respect to which Lessee shall look solely to Lessor for refund or reimbursement; or

e. Except as permitted by the terms of the Lease, bound by any amendment or modification of the Lease entered into without its prior written consent, including without limitation any such amendment or modification so as to materially reduce the rents and other charges payable thereunder, or shorten the term thereof, or adversely affect the rights or increase the obligations of the Lessor thereunder or any prepayment of rents or other charges under the lease for more than one month in advance made without its consent and written approval, which will not be unreasonably withheld.

Neither General Electric Capital Corporation nor any other party who from time to time shall be included in the definition of Mortgagee hereunder, shall have any liability or responsibility under or pursuant to the terms of this Agreement after it ceases to own an interest in or to the Project. Nothing in this Agreement shall be construed to require Mortgagee to see to the application of the proceeds of the

Loan, and Lessee's agreements set forth herein shall not be impaired on account of any modification of the documents evidencing and securing the Loan. Lessee acknowledges that Mortgagee is obligated only to Borrower to make the Loan only upon the terms and subject to the conditions set forth in the agreements between Mortgagee and Borrower pertaining to the Loan. Lessee further acknowledges and agrees that neither Mortgagee nor any purchaser of the Project at foreclosure sale or any grantee of the Project named in a deed-in-lieu of foreclosure, nor any heir, legal representative, successor, or assignee of Mortgagee or any such purchaser or grantee, has or shall have any personal liability for the obligations of Lessor under the Lease; provided, however, that the Lessee may exercise any other right or remedy provided thereby or by law in the event of any failure by Lessor to perform any such material obligation.

4. Subordination. The Lease and all rights of Lessee thereunder, are subject and subordinate to the lien of the Mortgage and to any and all advances made on the security thereof and to any and all increases, renewals, modifications, consolidations, replacements and extensions of any such Mortgage. This provision is acknowledged by lessee to be self-operative and no further instrument shall be required to effect such subordination of the Lease. Lessee shall, however, upon demand at any time or times execute, acknowledge and deliver to Mortgagee any reasonable instruments and certificates that may be necessary or proper to confirm or evidence such subordination. However, notwithstanding the generality of the foregoing provisions of this paragraph, Lessee agrees that the Mortgagee shall have the right at any time to subordinate any such Mortgage to the Lease on such terms and subject to such conditions as the Mortgagee may deem appropriate in its discretion. Lessee, for itself and its successors and assigns, agrees that, without the prior written consent of Mortgagee, Lessee will not (a) enter into any subordination agreement with any person other than Mortgagee or otherwise subordinate this Lease to any other lien or encumbrance; or (b) agree to attend to or recognize any purchaser of the Project at any foreclosure sale under any lien other than that of the Mortgage or any transferee who acquires the Project by deed in lieu of foreclosure or otherwise under any lien other than that of the Mortgage (provided, however, that this provision shall not be deemed to constitute Mortgagee's consent to the placing of any lien other than the Mortgage on the Project).

5. Notice. Lessee agrees to give written notice to Mortgagee (whose name and address previously shall have been furnished to lessee in writing) of any default by Lessor, Borrower or any successor landlord under the Lease not more than sixty (60) days prior to terminating the Lease. Lessee further agrees that it shall not terminate the Lease or exercise any such right or remedy provided such default is cured within such sixty (60) days; provided, however, that if such default cannot by its nature be cured within sixty (60) days, then Lessee shall not terminate the Lease or exercise any such right or remedy, provided the curing of such default is commenced within such sixty (60) days and is diligently prosecuted thereafter. Such notices shall be delivered ~~by certified mail, return receipt requested to:~~ pursuant to the terms of the Lease,

Senior Investment Manager  
General Electric Capital Corporation  
209 W. Jackson  
Suite 200  
Chicago, IL 60606

6. Mortgagee. The term "Mortgagee" shall be deemed to include General Electric Capital Corporation and any of its successors and assigns, including anyone who shall have succeeded to Lessor's interest in and to the Lease and the Project by, through or under judicial foreclosure or sale under any power or other proceedings brought pursuant to the Mortgage, or deed in lieu of such foreclosure or proceedings, or otherwise.

7. Modifications and Successors. This Agreement may not be modified orally or in any manner other than by an agreement, in writing, signed by the parties hereto and their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

8. Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

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

MORTGAGEE

GENERAL ELECTRIC CAPITAL CORPORATION,  
a New York corporation,

By: [Signature]  
Name: MARC SWEROLA  
Title: Senior Operating Manager

LESSEE:

BARNES & NOBLE BOOKSELLERS, INC.

By: [Signature]  
Name: Mitchell S. Klipper  
Title: Executive Vice President

UNOFFICIAL COPY

99754016

STATE OF ILLINOIS )  
COUNTY OF Cook ) ss.

The foregoing Agreement was acknowledged before me this 26th day of July, 1999 by Marc Swerdlow as Senior Operations Manager of GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation, on behalf of corporation.

Nancy G. Tramutola

Notary Public

My commission expires: 4/1/2001

STATE OF NEW YORK )  
COUNTY OF NASSAU ) ss.



The foregoing Agreement was acknowledged before me this 8th day of July, 1999 by Mitchell S. Klipper as Executive Vice President of Jarvis & Noble Booksellers, Inc. a Delaware corporation, on behalf of corporation.

Melinda R. Valdez  
Notary Public

My commission expires: \_\_\_\_\_

MELINDA R. VALDEZ  
Notary Public, State of New York  
No. 01VA5077243  
Qualified in Nassau County  
Commission Expires May 5, 192001

# UNOFFICIAL COPY

99754016

## BORROWER CONSENT

Borrower hereby consents to the terms and conditions of this Agreement and agrees to be bound by the terms hereof.

ARLINGTON, LLC

By: M & J/Retail Operations GP, Inc.

By: \_\_\_\_\_

Marc R. Wilkow  
President

Its: \_\_\_\_\_

STATE OF IL )

) ss.

COUNTY OF Cook )

The foregoing Agreement was acknowledged before me this 2nd day of August, 1999 by Marc R Wilkow as President of M & J Retail Operations, an Illinois corporation, on behalf of corporation.



Cheryl Zientara  
Notary Public

My commission expires: \_\_\_\_\_

THIS DOCUMENT WAS DRAFTED BY AND AFTER RECORDING

RETURN TO:  
DAVID S. EISEN  
M & J WILKOW LTD.  
180 NORTH MICHIGAN AVENUE  
SUITE 200  
CHICAGO, IL 60601

Cook County Clerk's Office

# UNOFFICIAL COPY

EXHIBIT A  
LEGAL DESCRIPTION

99754016

[TO BE INSERTED]

Property of Cook County Clerk's Office

BOX 333671

# UNOFFICIAL COPY

EXHIBIT "A-1"

99754016

## ANNEX I LEGAL DESCRIPTION

THAT PART OF LOT 2 IN HARDEE'S RAND ROAD SUBDIVISION, BEING A SUBDIVISION OF PARTS OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 17 AND THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 18, LYING SOUTHWESTERLY OF THE CENTERLINE OF RAND ROAD, ALL IN TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 16, 1986 AS DOCUMENT NO. 86297345, AND A 0.019 ACRE PARCEL SOUTH OF SAID LOT 2, DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLY MOST CORNER OF SAID LOT 2; THENCE SOUTH 42°02'44" WEST 568.13 FEET TO THE SOUTH LINE OF SAID LOT 2; THENCE NORTH 89°47'42" WEST 28.95 FEET ALONG THE SOUTH LINE OF SAID LOT 2; TO A POINT 96.40 FEET, AS MEASURED ALONG SAID SOUTH LINE, EAST OF A CORNER OF SAID LOT 2; THENCE NORTH 47°49'39" WEST 186.71 FEET TO A SOUTH LINE OF SAID LOT 2; THENCE NORTH 89°47'42" WEST 27.62 FEET ALONG THE LAST DESCRIBED SOUTH LINE TO A POINT 373.47 FEET, AS MEASURED ON SAID SOUTH LINE, EAST OF THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 17, AFORESAID; THENCE NORTH 47°57'53" WEST 194.53 FEET; THENCE NORTH 31°32'09" WEST 157.43 FEET TO A WESTERLY LINE OF SAID LOT 2; THENCE NORTH 42°00'35" EAST 10.81 FEET TO A SOUTHWESTERLY LINE OF SAID LOT 2; THENCE NORTH 47°59'25" WEST, ALONG SAID SOUTHWESTERLY LINE, 325 FEET TO A NORTHWEST LINE OF LOT 2; THENCE NORTH 42°00'35" EAST, ALONG SAID NORTHWEST LINE, 550.00 FEET TO THE SOUTH LINE OF RAND ROAD (SAID SOUTH LINE ALSO BEING THE NORTHEASTERLY LINE OF SAID LOT 2); THENCE SOUTH 47°59'25" EAST ALONG SAID SOUTH LINE, 246.30 FEET; THENCE SOUTH 42°00'35" WEST, 230 FEET; THENCE SOUTH 47°59'25" EAST 175 FEET; THENCE NORTH 42°00'35" EAST 230 FEET TO THE SOUTH LINE OF RAND ROAD; THENCE SOUTH 47°59'25" EAST, 170.67 FEET TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

03-17-302-065-0008

41 W. RAND ROAD

ARLINGTON HEIGHTS, IL

60004