



MISC 2015067440



AUG 12 2015 12:32 P 9

Fee amount: 58.00  
FB: 58-43380  
COMP: AH

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
08/12/2015 12:32:33.00



2015067440

**THIS PAGE INCLUDED FOR INDEXING**  
**PAGE DOWN FOR BALANCE OF INSTRUMENT**

Stewart Title Company #29  
1055 North 115<sup>th</sup> Street, Suite 300  
Omaha, NE 68154

File Number: N/A

RECORDING REQUESTED BY  
~~AND WHEN RECORDED, MAIL TO:~~

H & M Hennes & Mauritz L.P.  
110 Fifth Avenue, 11<sup>th</sup> floor  
New York, NY 10011  
Attn: Henry Rouda, Esq.

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**SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT**

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**THIS SUBORDINATION, ATTORNMENT, AND NON-DISTURBANCE AGREEMENT** ("this Agreement"), is made as of July 24, 2015, by and between U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF COMM 2012-LTRT COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, its successors and/or assigns ("Lender"), H & M HENNES & MAURITZ L.P., a New York limited partnership ("Tenant"), and WESTROADS MALL L.L.C., a Delaware limited liability company ("Landlord").

**WITNESSETH:**

WHEREAS, Lender is the owner and holder of a loan made by GERMAN AMERICAN CAPITAL CORPORATION ("Original Lender"), to Borrower, which is evidenced by a Promissory Note (the "Note") from Borrower to Original Lender and secured in part by a first deed of trust, mortgage, or deed to secure debt (which is herein called the "Mortgage"). The Mortgage, the Note and all other documents and instruments evidencing and/or securing the Note or now or hereafter executed by Borrower or others in connection with or related to the Loan including any assignments of leases and rents, other assignments, security agreements, financing statements, guaranties, indemnity agreements (including environmental indemnity agreements), letters of credit, or escrow/holdback arrangements, together with all amendments, modifications, substitutions or replacements thereof, are sometimes herein collectively referred to as the "Loan Documents".

WHEREAS, By Lease dated July 30, 2013 (the "Lease"), Landlord leased to Tenant those certain premises (the "Demised Premises") which constitutes or forms a portion of the property covered by the Mortgage and commonly known as Westroads Mall, legally described on Exhibit "A" (the "Mortgaged Property"); and

WHEREAS, Tenant, Landlord and Lender desire to confirm their understanding with respect to the Lease and the Mortgage;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree as follows:

1. Tenant hereby subordinates its interest in the Lease and all of its right, title and interest in and to the leasehold estate created thereby, to the lien of the Mortgage and the other Loan Documents and to all present or future advances under the obligations secured thereby. The interests subordinated hereby include without limitation any and all provisions of the Lease, including any extension or renewal rights, options to purchase, rights of first refusal, and other such rights.

2. So long as Tenant is not in default (beyond any notice and cure period) in the payment of base rental or additional rental: (a) Tenant's possession or occupancy of the Demised Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, shall not be terminated, diminished or interfered with by Lender in the exercise of any of the Lender's rights under the Mortgage, and Lender will

not disturb the peaceful and quiet possession of the Demised Premises by Tenant by reason of any foreclosure; and (b) Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage unless procedurally necessary, and, in such case, not for the purpose of terminating the Lease.

3. Tenant agrees that in the event Landlord is in default under the Mortgage or any other Loan Documents, and after Lender gives notice to Tenant (in the manner hereinafter provided), Tenant shall thereafter pay directly to Lender all rentals and all other payments to be made by Tenant under the Lease. Tenant is hereby irrevocably authorized by Landlord to rely upon and comply with any notice or demand by the Lender for the payment to the Lender of any rental or other amounts which may be or become due under the Lease. Landlord irrevocably agrees that Tenant shall not be liable to Landlord or any person claiming under Landlord, for making any payment or rendering any performance to Lender. Tenant shall have no obligation or right to inquire whether any default has actually occurred or is then existing. By its execution of this Agreement, Landlord irrevocably makes and delivers the above instructions.

4. If (a) any proceedings are brought for the foreclosure of the Mortgage; (b) the Mortgaged Property (or any part thereof) should be sold pursuant to a Trustee's sale; or (c) the Mortgaged Property is conveyed by deed in lieu or assignment in lieu of foreclosure, then such purchaser shall take subject to and shall be bound by the obligations of the Landlord under the Lease and Tenant shall attorn to Lender (or any other holder or its nominee), its nominee, or such purchaser, as the case may be, as the Landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto. Tenant agrees, however, to execute and deliver at any time, and from time to time, upon the request of Landlord, Lender or of any other holder(s) of any of the indebtedness or other obligations secured by the Mortgage or any such nominee or purchaser, any instrument or certificate (in a form and substance reasonably acceptable to Tenant and Lender), that Tenant, Landlord, Lender, such other holder(s), or such nominee or purchaser, as the case may be, deems to be necessary or appropriate in any such foreclosure proceeding or conveyance in lieu of foreclosure or otherwise to evidence such attornment.

5. (a) If Lender or its nominee or designee succeeds to the rights of Landlord under the Lease through possession or foreclosure action, delivery of a deed in lieu of foreclosure or otherwise in connection with Lender exercising its rights or remedies under the Loan Documents, or if any purchaser acquires the Demised Premises upon any foreclosure, any trustee's sale or otherwise (hereinafter collectively the "New Landlord"), Tenant shall attorn to and recognize the New Landlord as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument (in form and substance reasonably acceptable to Tenant) that the New Landlord may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as a direct lease between the New Landlord and Tenant upon all terms, conditions, and covenants as are set forth in the Lease, and New Landlord shall be bound to Tenant under all the terms, covenants and conditions of the Lease (except as may be modified by this Agreement).

(b) Notwithstanding the foregoing subsection, in such event the New Landlord shall not in any event be liable for any of the following, provided, however, that New Landlord is not an entity that controls, is controlled by, or is under common control with Landlord:

(i) any previous act or omission of Landlord or any prior landlord under the Lease occurring prior to New Landlord obtaining possession or title to the Mortgaged Property;

(ii) any setoff, defense or counterclaim which has previously accrued to Tenant against Landlord, which arises prior to the date New Landlord obtains possession or title to the Mortgaged Property;

(iii) the performance or observance of any amendment or modification to the Lease made without the written consent of Lender;

(iv) any prepayment of rent or additional rent made more than one (1) month in advance of the due date under the Lease which Tenant might have paid to Landlord, unless previously approved in writing by Lender; or

(v) the return of any security deposit made under the Lease, unless the security deposit has been paid to New Landlord.

Notwithstanding anything in this Section 5 to the contrary and provided that Tenant has complied with the notice requirements to Lender as set forth in Sections 7 and 8 below and Lender was duly afforded its cure rights as set forth in Sections 7 and 8 below, nothing in this Section 5 shall limit (A) Tenant's rights to exercise any remedies otherwise available to Tenant because of events occurring prior to the date New Landlord becomes the owner of the Demised Premises (including, without limitation, any self-help and offset rights expressly set forth in the Lease), or (B) New Landlord's liability as successor landlord to cure any default of a continuing nature such as, without limitation, repair and maintenance obligations. With respect to any surrender, termination, amendment or modification of the Lease (collectively, a "modification"), Lender's consent shall be deemed to have been given for any modification presented to Lender for its consent, to which Lender fails to approve or deny within twenty (20) days after Lender's receipt thereof, PROVIDED SUCH REQUEST FOR CONSENT SHALL IDENTIFY IN ALL CAPITAL LETTERS THAT THE FAILURE TO REPLY WITHIN TWENTY (20) DAYS SHALL BE DEEMED AN APPROVAL TO SUCH CONSENT.

6. Intentionally Omitted.

7. Tenant shall not pursue any rights for a default under the Lease by Landlord unless Tenant has delivered to Lender a copy of any notice of default (which notice will be given simultaneously with, or promptly after, notice to Landlord) and Lender has failed to cure the default during the same cure period afforded to Landlord under the Lease, commencing upon Lender's receipt of the default notice. Tenant acknowledges that Lender is not obligated to cure any Landlord default, but if Lender elects to do so and actually cures such Landlord default within the applicable cure period, Tenant agrees to accept cure by Lender as that of Landlord under the Lease and will not exercise any right or remedy under the Lease for such Landlord default.

8. Any notice or communication required or permitted hereunder shall be given in writing, sent by any nationally recognized overnight courier service which provides proof of delivery, or by United States mail, postage prepaid, registered or certified mail, in either case, addressed as set forth below. Notices shall be deemed effective when delivered or when delivery is refused. For purposes of notice, the addresses of the parties shall be as follows:

If to Lender, to: U.S. Bank National Association, as Trustee, for the  
registered holders of COMM 2012-LTRT Commercial  
Mortgage Pass-Through Certificates  
c/o KeyBank National Association  
11501 Outlook Street, Suite 300  
Overland Park, Kansas 66211

with a copy to: Daniel Flanigan, Esq.  
Polsinelli PC  
900 W. 48th Street  
Suite 900  
Kansas City, Missouri 64112

If to Tenant, to: H & M Hennes & Mauritz L.P.  
110 Fifth Avenue, 11<sup>th</sup> Floor  
New York, NY 10011  
Attn: Real Estate Legal

*and*

H & M Hennes & Mauritz L.P.  
100 Porete Avenue  
North Arlington, NJ 07031  
Attn: Lease Accountant

*and*

H & M Hennes & Mauritz AB  
Master Samuelsgatan 46A  
SE-106 38 Stockholm  
SWEDEN  
Attn: Legal Department

If to Landlord, to

Westroads Mall L.L.C,  
c/o Westroads Mall  
110 N. Wacker Dr.  
Chicago, IL 60606  
Attn: Law/Lease Administration Department

with a copy to:

Westroads Mall  
10000 California St.  
Suite 1221  
Omaha, NE 68114  
Attn: General Manager

From time to time either party may designate another or additional addresses for all purposes of this Agreement by giving the other party no less than thirty (30) days' advance notice of such change of address in accordance with the notice provisions hereof.

9. Nothing herein contained is intended, nor shall be construed, to abridge or adversely affect any right or remedy of Tenant under the Lease in the event of any default by Landlord, Lender, its nominee or such other holder in the conditions of the Lease on Landlord's part to be performed.

10. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their successors and assigns, and any purchaser or purchasers at foreclosure of the Mortgaged Property, and its or their respective heirs, personal representatives, successors and assigns.

11. This Agreement shall be governed by and construed under the laws of the State in which the Mortgaged Property is located.

12. All exhibits attached hereto are by this reference incorporated fully herein, and the term "this Agreement" shall include all such exhibits.

[Remainder of page is blank; signatures appear on next page.]

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

**LENDER**

**U.S. BANK NATIONAL ASSOCIATION, AS  
TRUSTEE, FOR THE REGISTERED HOLDERS OF  
COMM 2012-LTRT COMMERCIAL MORTGAGE  
PASS-THROUGH CERTIFICATES**

By: KeyBank National Association,  
as Authorized Agent

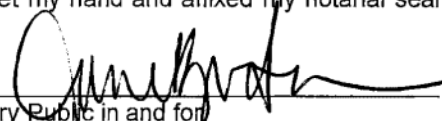
By:   
Name: Diane Haislip  
Title: Senior Vice President

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF JOHNSON        )

This instrument was acknowledged before me on the 24<sup>th</sup> of July, 2015 by Diane Haislip, as Authorized Agent of KeyBank National Association, as authorized agent of U.S. Bank National Association, as Trustee for the registered holders of COMM 2012-LTRT Commercial Mortgage Pass-Through Certificates, on behalf of U.S. Bank National Association, as Trustee for the registered holders of COMM 2012-LTRT Commercial Mortgage Pass-Through Certificates.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

  
Notary Public in and for  
said County and State

Print Notary's Name: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

Jane Burton  
NOTARY PUBLIC  
STATE OF KANSAS  
My Commission Expires  
03/08/2016

**TENANT**

**H & M HENNES & MAURITZ L.P.,**  
a New York limited partnership

By: H & M Hennes & Mauritz Management B.V.  
a Netherlands company  
Its: general partner

By: [Signature]  
Name: Hank Rouda  
Its: Authorized Signatory

By: [Signature]  
Name: Kai Aejmelaesus  
Its: Authorized Signatory

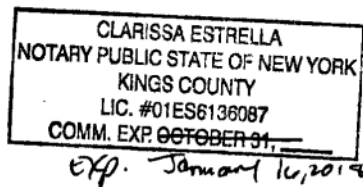
STATE OF NEW YORK            )  
  ) ss  
COUNTY OF NEW YORK        )

On July 8, 2015 before me, Clarissa Estrella, a Notary Public,  
personally appeared Hank Rouda and Kai Aejmelaesus,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of New York that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)



**LANDLORD**

**WESTROADS MALL L.L.C.,**

a Delaware limited liability company

By: 

Name

Marvin S. Levine

Its:

Authorized Signatory

**ACKNOWLEDGMENT**

STATE OF Illinois )

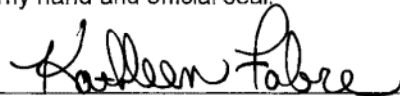
COUNTY OF Cook ) ss

On June 22, 2015 before me, Kathleen Fabre, a Notary Public, personally appeared Marvin S. Levine, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)





**EXHIBIT A**

**Legal Description**

**WESTROADS MALL**

58-43380 Real property in the City of Omaha, County of Douglas, State of Nebraska, described as follows:

Parcel A, Block 3, Westroads Addition, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, except that part more particularly described as follows:

Beginning at a point on the Easterly line of Parcel A, said point being 261.00 feet Southeast of the Northeast corner of Parcel A: thence South 20°29'45" East (platted bearing) along the Easterly line of said Parcel A, a distance of 450.00 feet to a joint; thence South 69°30'15" West, a distance of 236.00 feet to a point; thence North 20°29'45" West, a distance of 190.00 feet to a point; thence South 69°30'15" West, a distance of 43.00 feet to a point; thence North 20°29'45" West a distance of 77.00 feet to a point; thence South 69°30'15" West, a distance of 192.00 feet to a point; thence North 20°29'45" West, a distance of 74.00 feet to a point; thence North 69°30'15" East, a distance of 192 feet to a point; thence North 20°29'45" West a distance of 17 feet to a point; thence North 69°30'15" East a distance of 43.00 feet to a point; thence North 20°29'45" West, a distance of 92.00 feet to a point; thence North 69°30'15" East, a distance of 236.00 feet to the point of beginning.

58-43383

Lot 2, Westroads Replat 2, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

All together with non-exclusive rights contained in Construction, Operation and Easement Agreements filed October 8, 1965 in Book 430 at Page 273, as amended by instruments filed October 24, 1967 in Book 454 at Page 489 and filed January 25, 1994 in Book 1109 at Page 668, all of the Miscellaneous Records of Douglas County, Nebraska, and non-exclusive rights contained in Construction, Operation and Easement Agreements filed October 18, 1965 in Book 430 at Page 447, as amended by instruments filed December 26, 1967 in Book 457 at Page 615, and filed January 25, 1994 in Book 1109 at Page 631, all of the Miscellaneous Records of Douglas County, Nebraska.

58-43393

Lot 1, Westroads Replat 5, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

NorthStar Title Services, LLC

1406 W 6Th Street Ste 400  
Cleveland, Ohio 44113

Order No / Accom 151513NS