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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2004 077154

2004 SEP 10 PM 4:04

MORRIS W. WATERS  
RECORDER

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Denise Gigi  
Toys "R" Us, Inc.  
One Geoffrey Way  
Wayne, New Jersey 07470

First American  
10350 Ormsby Park Place  
Suite 105  
Louisville, KY 40223

(For Recorder's Use Only)

TRU #6015  
Merrillville, IN

Subordination, Non-Disturbance and Attornment Agreement

THIS AGREEMENT, made as of the 18<sup>th</sup> day of August, 2004, between GENERAL ELECTRIC CAPITAL BUSINESS ASSET FUNDING CORPORATION, a Delaware corporation, having an office at Middle Market Risk, 10900 Northeast Fourth Street, Suite 500, Bellevue, Washington 98004 (hereinafter called "Mortgagee") and TOYS "R" US-DELAWARE, INC., a Delaware corporation, having an office at One Geoffrey Way, Wayne, New Jersey 07470, (hereinafter called "Tenant").

WITNESSETH

WHEREAS, Mortgagee is to become the holder of a mortgage (hereinafter called the "Mortgage", which Mortgage is more particularly described on Exhibit C (annexed hereto and made a part hereof) covering a parcel of land in Merrillville, County of Lake, State of Indiana, described on Exhibit A, owned by Wrexham Associates (hereinafter called "Landlord") together with the improvements thereon (being hereinafter called the "Shopping Center"); and

WHEREAS, by a certain lease heretofore entered into between Landlord and Tenant dated as of October 1, 1979, as amended pursuant to Schedule D (hereinafter collectively referred to as the "Lease"), Landlord leased to Tenant a portion of the Shopping Center, described on Exhibit B annexed hereto, together with any improvements thereon (said premises and the improvements thereon 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 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.

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jm

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.

3. Tenant certifies that the Lease is presently in full force and effect.

4. Mortgagee agrees that so long as the Lease shall be in full force and effect:

(a) 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) All condemnation awards and insurance proceeds paid or payable with respect to the Demised Premises or any other part of the Shopping Center 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.

5. Tenant shall not use, produce, store, release, dispose of or bring into the Demised Premises any hazardous waste or materials or allow any other entity or person to do so except as incidentally related to the operation and maintenance of the Demised Premises and equipment located therein, such as small amounts of ordinary office supplies, pesticides, insecticides or cleaning supplies used in Tenant's operation of the Demised Premises, which substances shall be stored and used in accordance with applicable laws and regulations and used in a prudent manner. As used herein, the term "hazardous waste or materials" includes any substance, waste or material defined or designated as hazardous, toxic or danger (or any similar term) by any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect including, without limitation, petroleum products and by-products, asbestos, polychlorinated biphenyls, chlorinated solvents, and urea formaldehyde. Tenant shall indemnify and hold harmless Landlord and Mortgagee against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, cleanup costs, remedial actions, costs and expenses (including, without limitation, attorneys' fees and disbursements) which may be imposed on, incurred or paid by, or asserted against Landlord and/or Mortgagee directly or indirectly arising from or attributable to any misrepresentation or breach of any warranty, covenant or agreement by Tenant under this section. The provisions of this section shall survive expiration or termination of the Lease.

6. If Mortgagee or any further holder of the Mortgage shall become the owner of the Shopping Center by reason of foreclosure of the Mortgage or otherwise, or if the Shopping Center 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 Shopping Center, 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 provision of the Lease for the remainder of the term thereof (including the Renewals 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 Renewals 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); (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; (iii) be liable for any act, omission or default of any prior landlord (including Landlord) under the Lease; provided that, however, Mortgagee shall, in accordance with the terms and conditions of the Lease, upon becoming successor landlord thereunder, cure any such existing or continuing defaults or acts or omissions of any landlord (including landlord) and be liable to Tenant for damages arising out of any such existing or continuing defaults or acts or omission of any landlord (including landlord) that are not cured (within the applicable time periods set forth in the Lease) accruing from and after the date Mortgagee becomes successor landlord under the Lease; or (iv) be subject to any offsets (other than to the extent same are provided for in the Lease and provided that mortgagee has received notice thereof and opportunity to cure (within the applicable time periods set forth in the Lease), claims or defenses that Tenant might have against any prior landlord (including Landlord) under the Lease [subject to and except as otherwise set forth in subparagraph 5(b)(iii) hereinabove and to the extent as otherwise provided for in the Lease]).

7. Mortgagee shall be given notice of any default by Landlord the same time notice is given to Landlord. Mortgagee shall have the same time period in which to cure as is set forth in the Lease for Landlord, which time period, however, shall commence upon the expiration of the applicable time period for Landlord to cure.

8. In the event Mortgagee notifies Tenant in writing that Landlord is in default under the Mortgage and demands that payment of all future rentals be made directly to Mortgagee, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Mortgagee or as otherwise instructed by Mortgagee pursuant to such notice, beginning with the payment next due after such notice of default. Landlord hereby consents to such payment and agrees that Tenant shall not be liable to Landlord for any rental payments actually paid to Mortgagee pursuant to this Section 8.

9. In the event of any act, omission, or default by the Landlord which would give the Tenant the right, either immediately, or after the lapse of a period of time, to terminate the Lease, or to claim a partial or total eviction, the Tenant will not exercise any such right (i) until it has sent written notice of such act, omission or default to the Mortgagee, provided Mortgagee has provided written notification of Mortgagee's address, as provided herein, and (ii) unless the Mortgagee shall have failed to cure such default within any applicable cure period provided to Landlord in the Lease, after receipt of such notice to cure such default.

10. 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 to the attention of the Vice President - Real Estate, Design, Construction and Facilities of Tenant, and one copy to the attention of Vice President – Real Estate Counsel 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 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.

11. Upon recorded satisfaction of the Mortgage, this Agreement shall become null and void and be of no further effect.

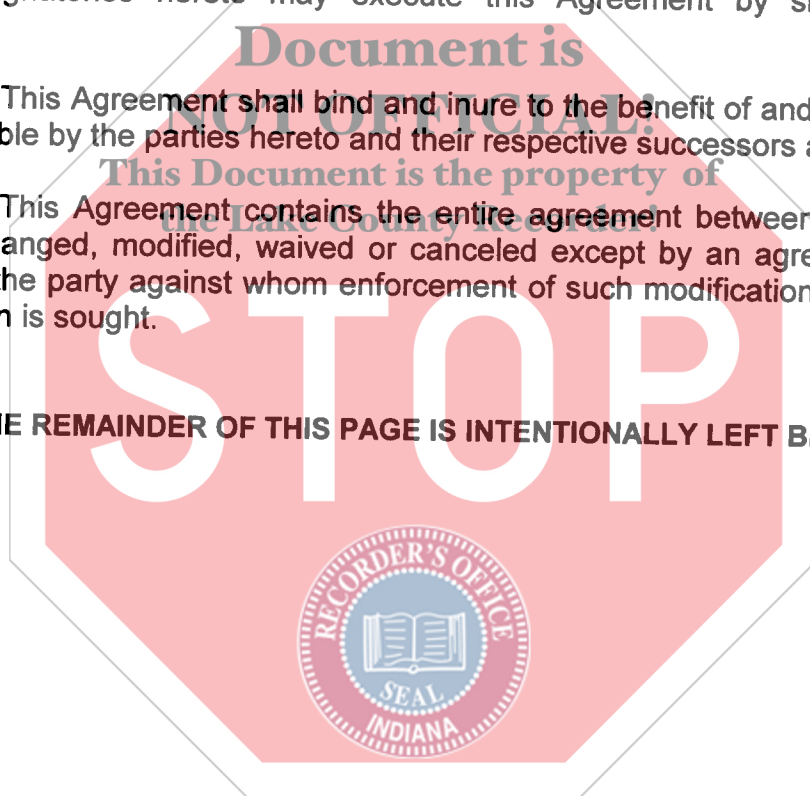
12. This Agreement shall be construed under the laws of the State of Virginia applicable to contracts made and to be performed therein (excluding its choice-of-law principles).

13. This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

14. 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.

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

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

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

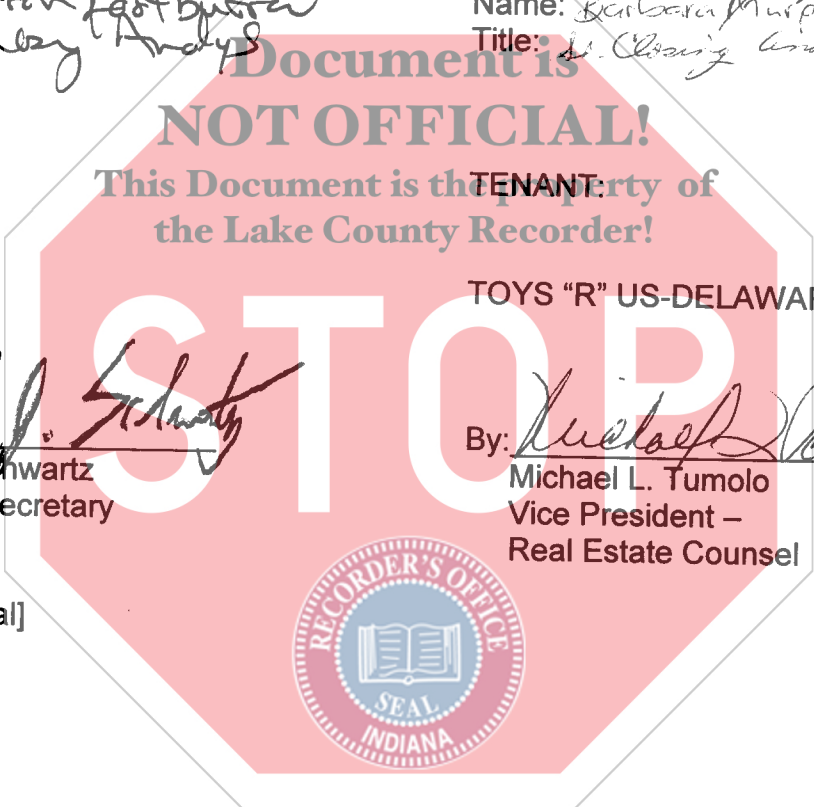
MORTGAGEE:

Attest:

CAPITAL  
GENERAL ELECTRIC BUSINESS  
ASSET FUNDING CORPORATION

By: Sharon Lefler  
Name: Sharon Lefler  
Title: Sr. Closing Analyst

By: Barbara Murphy  
Name: Barbara Murphy  
Title: Sr. Closing Analyst



Attest:

TENANT:  
TOYS "R" US-DELAWARE, INC.

By: David J. Schwartz  
David J. Schwartz  
Assistant Secretary

By: Michael L. Tumolo  
Michael L. Tumolo  
Vice President -  
Real Estate Counsel

[Corporate Seal]

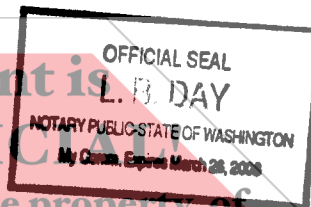
STATE OF WASHINGTON )  
 ) SS:  
COUNTY OF KING )

On August 27, 2004 before me, L. B. DAY, a Notary Public in and for said State, personally appeared Barbara Murphy and \_\_\_\_\_, personally known to me (or 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 on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

L. B. Day

(Seal)



This Document is the property of  
the Lake County Recorder!

STATE OF NEW JERSEY )  
 ) SS:  
COUNTY OF PASSAIC )

On August 18, 2004 before me, Denise Gigi, a Notary Public in and for said State, personally appeared Michael L. Tumolo and David J. Schwartz, personally known to me (or 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 on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Denise Gigi (Seal)

DENISE GIGI  
A Notary Public of New Jersey  
My Commission Expires March 5, 2007

EXHIBIT A

LEGAL DESCRIPTION OF LEASED PREMISES



SCHEDULE A

DESCRIPTION

Part of the North half of Section 23, Township 35 North, Range 8 West of the 2nd P.M., Lake County, Indiana, described as commencing at the Northwest corner of said Section 23; thence South 02 degrees 42 minutes 00 seconds East along the West line of said Section 23, 842.20 feet to the South right-of-way line of the Chesapeake and Ohio Railroad; thence South 62 degrees 42 minutes 00 seconds East along said South line, 1652.33 feet to the place of beginning; thence continuing South 62 degrees 42 minutes 00 seconds East along said South line, 192.67 feet; thence South 27 degrees 18 minutes 00 seconds West, 274.33 feet; thence South 62 degrees 42 minutes 00 seconds East 4.00 feet; thence South 27 degrees 18 minutes 00 seconds West, 80.00 feet; thence South 62 degrees 42 minutes 00 seconds East, 26.41 feet; thence South 27 degrees 18 minutes 00 seconds West, 275.00 feet; thence North 62 degrees 42 minutes 00 seconds West, 260.00 feet; thence North 27 degrees 18 minutes 00 seconds East, 275.00 feet; thence South 62 degrees 42 minutes 00 seconds East, 36.92 feet; thence North 27 degrees 18 minutes 00 seconds East, 354.33 feet to the place of beginning.

**NOT OFFICIAL!**

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**STOP**





EXHIBIT B

DEMISED PREMISES





EXHIBIT C

DESCRIPTION OF MORTGAGE

\$892,461.00

Mortgage, Security Agreement, Assignment of Leases and Rents  
and Fixture Filing to General Electric Capital Business Asset  
Funding Corporation



EXHIBIT D

1. Agreement to Modify Lease dated October 1, 1979;
2. Memorandum of Lease dated October 1, 1979;
3. Letter Agreement dated October 5, 1979;
4. Modification of Lease Agreement dated December 6, 1979 recorded December 20, 1979 as document number 565428;
5. Estoppel Certificate and Agreement of Lessee dated December 18, 1995.

