

RECORD AND RETURN TO:  
Michael L. Tumolo, Esq.  
Vice President - Counsel  
TOYS "R" US, INC.  
461 From Road  
Paramus, New Jersey 07652-3524

Non-Disturbance Agreement

THIS AGREEMENT, made as of the 2<sup>nd</sup> day of August, 1995, between LIFE INVESTORS INSURANCE COMPANY OF AMERICA, an Iowa corporation, whose address for purposes hereof is 4333 Edgewood Road NE, Cedar Rapids, IA 52499 (hereinafter called "Mortgagee") and TOYS "R" US, INC., a Delaware corporation, having an office at 461 From Road, Paramus, New Jersey 07652-3524, (hereinafter called "Tenant").

WITNESSETH

WHEREAS, Mortgagee is the beneficiary of a deed of trust (hereinafter called the "Mortgage") covering the parcel of land more particularly described in Exhibit 1 annexed hereto and hereby made a part hereof, owned by UNIVERSITY SQUARE ASSOCIATES, LTD., a Utah limited partnership (hereinafter called "Landlord"), together with the improvements erected thereon (said parcel of land and improvements thereon being hereinafter called the "Property"); and

WHEREAS, by a certain lease heretofore entered into between Landlord and Tenant dated as of July 10, 1995 (hereinafter called the "Lease"), Landlord leased to Tenant a portion of one of the buildings on the Property, which portion is shown crosshatched on Exhibit 2 annexed hereto and made a part hereof (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, as an inducement to Tenant to enter into the Lease, Article III thereof provides that the Lease is conditioned upon Landlord obtaining this Agreement from Mortgagee; and

WHEREAS, the parties desire to satisfy the foregoing condition and to provide for the non-disturbance of Tenant by the holder of the Mortgage;

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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 with the exception of Section 13.03 (b), and the term thereof, including the options to extend the term as set forth in the Lease.

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 and unmodified and Tenant as of this date has no knowledge of any charge, lien or claim of offset under the Lease.

4. Mortgagee agrees that so long as the Lease shall be in full force and effect and Tenant is not "Default" (as defined in the Lease) under the terms of the Lease:

(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 Property 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. If Mortgagee or any future holder of the Mortgage shall become the owner of the Property by reason of foreclosure of the Mortgage or otherwise, or if the Property 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 Property, 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 provisions of the Lease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term) except as provided herein, 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 Renewal 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 or omission of any prior landlord (including Landlord) ~~which act or omission gives rise under the Lease to such offset, except with respect to acts or omissions of which Mortgagee has received prior written notice under the Lease;~~ (iv) be subject to any offset or defenses which Tenant might be entitled to assert against any prior landlord (including Landlord) except with respect to such offsets or defenses of

\* except for acts or omissions which <sup>3</sup> give rise under the Lease to a right of offset or defense on the part of the Tenant, unless Mortgagee received prior written notice under the Lease of said acts or omissions. *pu*

which Mortgagee has received prior written notice under the Lease; or (v) be liable for the return of any security deposit unless said security deposit has actually been transferred to Mortgagee or its successors and assigns.

6. 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 attention of the Sr. Vice President - Real Estate and the other to the attention of Tenant's Real Estate Counsel, each 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,

7. 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.

8. 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.

[NEXT PAGE IS PAGE 5]

9 . 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.

Attest:

LIFE INVESTORS INSURANCE  
COMPANY OF AMERICA

By: *John R. Donna*  
Asst. Secretary

By: *Anna T. Nordstrom* *AST*  
Vice President

[Corporate Seal]

(Mortgagee)

Attest:

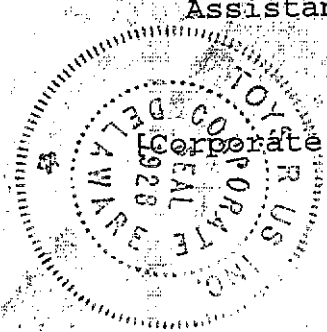
TOYS "R" US, INC.

By: *Ronald V. Lombardi*  
~~Ronald V.~~ Lombardi  
Assistant Secretary

By: *Michael Paul Miller*  
Michael Paul Miller  
Sr. Vice President-  
Real Estate

[Corporate Seal]

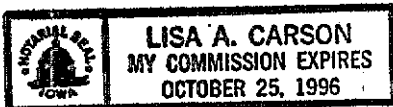
(Tenant)



STATE OF IOWA )  
 ) SS.:  
COUNTY OF )

On the 2<sup>nd</sup> day of August, 1995, before me  
Lisa A. Carson the undersigned Notary Public, personally  
appeared Thomas L Nordstrom and \_\_\_\_\_,  
personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the persons whose names are  
subscribed to the within instrument and acknowledged to me that  
they executed the same in their authorized capacities, and that  
by their signatures on the instrument LIFE INVESTORS INSURANCE  
COMPANY OF AMERICA, an Iowa corporation, the entity upon which  
they acted, executed the instrument.

WITNESS my hand and seal.



Lisa A. Carson  
Notary Public

SATE OF NEW JERSEY )  
 ) SS.:  
COUNTY OF BERGEN )

On the 28<sup>th</sup> day of July, 1995, be fore me  
Jacqueline Redl, the undersigned Notary Public, personally  
appeared MICHAEL PAUL MILLER, and RONALD V. LOMBARDI, personally  
known to me (or proved to me on the basis of satisfactory  
evidence) to be the persons whose names are subscribed to the  
within instrument and acknowledged to me that they executed the  
same in their authorized capacities, and that by their signatures  
on the instrument TOYS "R" US, INC., a Delaware corporation, the  
entity upon behalf of which they acted, executed the instrument.

WITNESS my hand and seal.

Jacqueline Redl  
Notary Public  
JACQUELINE REDL  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 10-12-98

EXHIBIT 1Description of the Property

Lots 2, 4 and 5, University Square, Plat "A", a Subdivision according to the official plat thereof on file and of record in the office of the Utah County Recorder.

Also Lot 1, University Square, Plat "C", a Subdivision according to the official plat thereof on file and of record in the office of the Utah Recorder.

Together with the rights and easements created pursuant to that certain Reciprocal Easement and Operation Agreement recorded April 30, 1991 as Entry No. 15743 in Book 2785, at Page 702 of Official records, as amended by (a) First Amendment to Reciprocal Easement and Operation Agreement recorded August 7, 1992 as Entry No. 39973, in Book 2976, at Page 920 of Office Records, and (b) First Amendment to Reciprocal Easement and Operating Agreement recorded August 21, 1992 as Entry No. 42918, in Book 2986, at Page 801 of Office Records.

Gross Leasable  
Floor Area:

- 5,500
- 8,927
- 20,873
- 66,052
- 22,546
- 17,990
- 141,888 sf TOTAL**

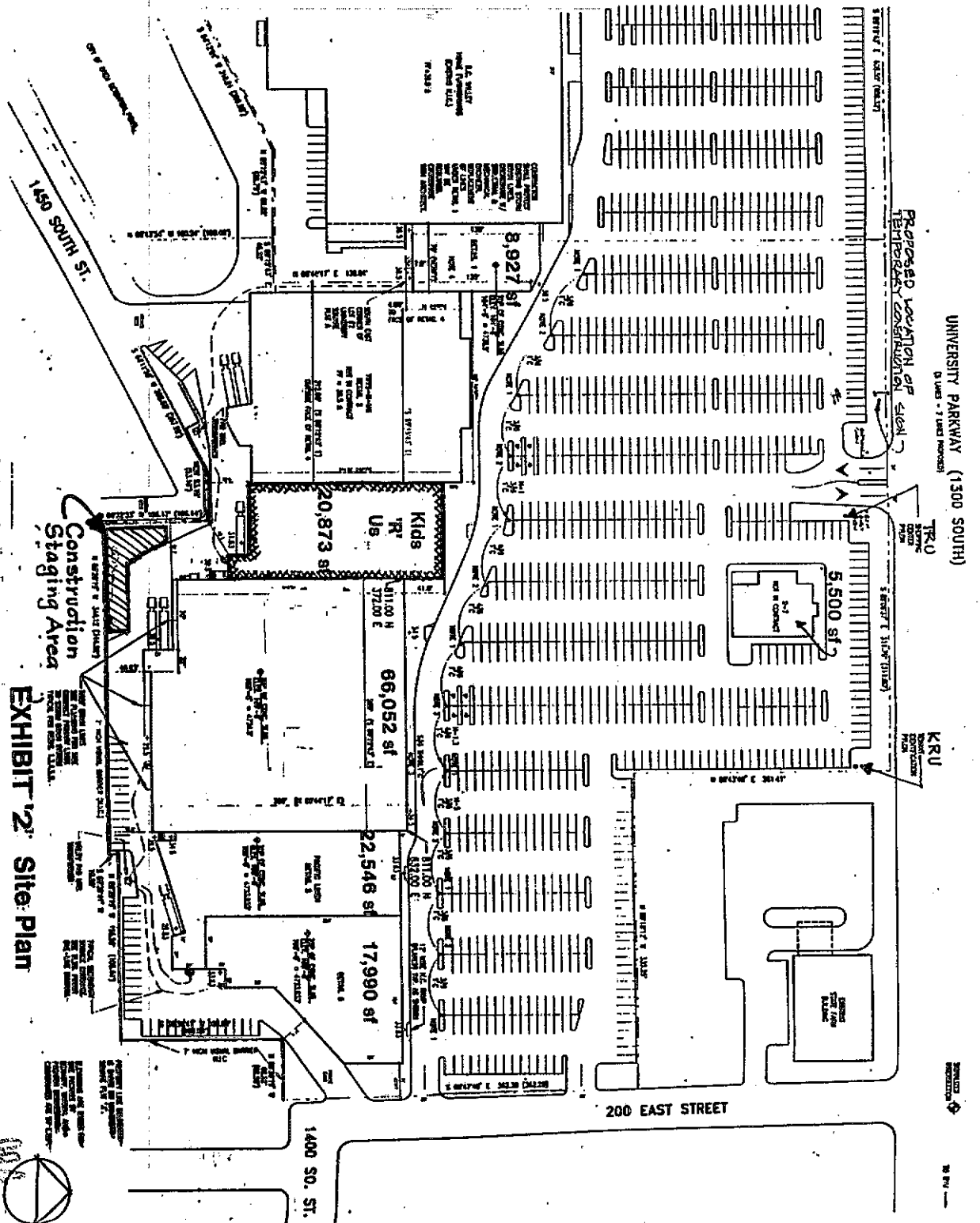


EXHIBIT '2' Site Plan



UNIVERSITY PARKWAY (1300 SOUTH)

200 EAST STREET

1400 SO. ST.

150 SOUTH ST.

Construction Staging Area

Proposed Location of Sign

KRU

TRU

REAR LOBBY

5,500 sf

8,927 sf

20,873 sf

66,052 sf

22,546 sf

17,990 sf

1400 SO. ST.



IN PLAN