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2000-12-07 09:34:24
Cook County Recorder 71.50
Store # 5773
Palatine, Illinois

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



THIS AGREEMENT ("Agreement") is entered into as of the last date written below by and between **PAYLESS SHOESOURCE, INC.**, a Missouri corporation, f/k/a Volume Shoe Corporation, a Missouri corporation ("Tenant"), having its principal office at 3231 East 6th Street, Topeka, Kansas, 66607, **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association ("Lender"), whose address is 135 South LaSalle Street, Ste 1260, Chicago, IL 60603, ATTN: RE Capital Markets Div., and **E.C.K.E., LLC**, an Illinois limited partnership ("Landlord"), whose address is c/o Great Lakes Principals, 221 W. Illinois Street, Wheaton, IL 60187 (Tenant, Lender and Landlord are collectively referred to herein as the "Parties".)

WITNESSETH:

WHEREAS, Landlord (or Landlord's predecessor(s)) and Tenant (or Tenant's predecessor(s)) have entered into that certain Lease Agreement dated April 28, 1999, ("Lease"), which said Lease demises certain premises located at 639 E. Dundee Road, Palatine, Illinois, being more particularly described on Exhibit "A" attached hereto and by reference made a part hereof ("Premises"). Tenant has not verified the accuracy of Exhibit "A" and makes no warranties, representations or covenants with respect thereto; and

WHEREAS, Lender has made or intends to make a loan ("Loan") to or for the benefit of Landlord to be secured by a mortgage, deed of trust, or other security instrument ("Mortgage") regarding the Premises; and

WHEREAS, Tenant is required to execute an instrument which evidences the subordination provided for by Section 16.00 of the Lease; and

WHEREAS, Tenant, Lender and Landlord desire to confirm their understanding with respect to the Lease and this Agreement.

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AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements contained herein, the Parties do hereby agree as follows:

1. The lien of the Lease shall be subordinate to the lien of the Mortgage.
2. So long as Tenant is not in breach or material default in the performance of any of the terms or provisions of the Lease, beyond any applicable grace or cure period, Tenant's possession, rights and privileges under the Lease, including Tenant's enjoyment, use and occupancy of the Premises during the term of the Lease and all renewals thereof, shall not be disturbed by Lender, and the Lender or any other such owner shall recognize all of Tenant's rights under the Lease.
3. So long as Tenant is not in breach or material default of the Lease beyond any applicable grace or cure period, Lender shall not name or join Tenant as a party defendant in any action or proceeding to foreclose the Mortgage, or for the purpose of terminating the Lease, or otherwise adversely affecting Tenant's rights under the Lease. If Tenant or any person claiming through or under Tenant is deemed a necessary party by the court, such party may be named or joined, but such naming or joining shall not otherwise be in derogation of Tenant's rights set forth in this Agreement.
4. If the interest of Landlord shall be acquired by Lender by reason of foreclosure of its Mortgage or other proceedings brought to enforce the rights of the holder thereof, by deed in lieu of foreclosure or by any other method, and Lender succeeds to the interest of Landlord under the Lease:
 - a. Tenant shall be bound under all of the terms and provisions of the Lease for the balance of the term thereof remaining with the same force and effect as if Lender were the original Landlord. Further, Lender or any other such owner shall recognize all of Tenant's rights under the Lease. This agreement by Tenant to attorn to Lender as its Landlord shall be effective immediately upon Lender succeeding to the interest of Landlord under the Lease without the execution of any further instruments.
 - b. Tenant shall be under no obligation to pay rent or additional rent to Lender or any subsequent owner until Tenant receives notice from Lender that Lender has succeeded to the rights of Landlord, or has exercised its right to receive payment of the rent. Landlord hereby agrees that should Lender request Tenant make any payments directly to Lender or otherwise, Landlord will hold Tenant harmless and allow Tenant to make such payments as requested without notice, demand or additional consent to or from Landlord. The foregoing sentence shall be applicable notwithstanding

any dispute between Lender and Landlord as to the validity of the request for direct payment to Lender or otherwise of any monies owed by Tenant to Landlord.

- c. Lender shall be bound to Tenant under the terms and provisions of the Lease, provided, however, that in no event shall Lender:
- i. be liable to Tenant for any previous act or omission of any prior Landlord, but Lender shall be responsible for performing any ongoing repair and maintenance obligations of the Landlord under the Lease to the extent that Lender or Landlord have been notified in writing by Tenant of the need thereof;
 - ii. be bound by any previous payment of rent or additional rent for a period greater than 1 month; and
 - iii. be liable to Tenant for the return of any security or other deposits given to secure the performance of Tenant's obligations under the Lease.
- d. Lender shall have no personal liability as successor to Landlord and Tenant shall look only to the Premises, including rents and profits derived therefrom for the satisfaction of Tenant's remedies for the collection of a judgment requiring the payment of money in the event of any default by Lender as Landlord under the Lease.
5. Provided Landlord or Lender gives written notice to Tenant of Lender's address, Tenant will notify Lender simultaneously with Notice to Landlord of any act, omission or default by Landlord, which would give Tenant the right either immediately or after the lapse of a period of time, to terminate the Lease, claim a partial or total eviction, or to reduce rent payable thereunder, or to credit or offset any amounts against future rents payable thereunder. However, failure to give notice to Lender shall in no way whatsoever alter or affect Tenant's rights and remedies for any defaults by Landlord and shall not subject Tenant to any claims by Lender. Tenant agrees that Lender shall have the right to cure Landlord's default. However, notwithstanding anything herein to the contrary, Lender shall have no greater period of time than that given to Landlord under the Lease to cure any such default. If Landlord shall have used any part of such time allowed, Lender shall be subject to such time used by Landlord unless otherwise agreed to in writing between Tenant and Lender.
6. For purposes of any notice to be given hereunder, the same shall be deemed to be delivered upon the first to occur: on the date of delivery or refusal of delivery if sent by personal delivery or Airborne, Federal Express, or a comparable national air courier service and provided such delivery or refusal of delivery is evidenced in writing by the delivery service; or on the third business day following mailing if deposited in the United States Mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested, and addressed to the Parties set out below:

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If to Tenant: Payless ShoeSource, Inc.
ATTN: Lease Administration
Store #5773
P.O. Box 3560
Topeka, KS 66601-3560

WITH A COPY TO:
Payless ShoeSource, Inc.
ATTN: General Counsel
Store #5773
P.O. Box 1189
Topeka, KS 66601-1189

If to Lender: LaSalle Bank National Association
135 South LaSalle Street, Ste 1260
Chicago, IL 60603
ATTN: RE Capital Markets Div.

If to Landlord: E.C.K.E., LLC
c/o Great Lakes Principals
221 W. Illinois Street
Wheaton, IL 60187

Such addresses may be changed by notice given in the same manner.

7. This Agreement may not be changed, amended, or modified in any manner other than by an agreement in writing specifically referring to this Agreement and executed by the Parties hereto.
8. If any provision of this Agreement shall be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. In the event of a conflict between the Lease and this Agreement, the terms and provisions of the Lease shall control.
9. If any legal action, arbitration or other proceeding is commenced to enforce any provision of this Agreement, the prevailing party shall be entitled to an award of its actual expenses, including without limitation, expert witness fees, actual attorneys' fees and disbursements.
10. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Premises are situated.
11. This Agreement shall in no way whatsoever be considered, construed or interpreted as a modification or amendment of the Lease. This Agreement shall be considered a contract separate and apart from the Lease and enforceable in accordance with its terms and provisions. This Agreement may be executed in counterparts.

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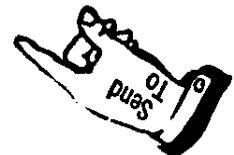
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12. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective heirs, successors and assigns.
13. Each individual executing this Agreement on behalf of Tenant represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of said corporation. Lender hereby agrees and acknowledges that notwithstanding anything to the contrary contained in this Agreement, there shall be absolutely no personal liability on any person(s) executing this Agreement on behalf of Tenant with respect to any of the terms or provisions of this Agreement. Said exculpation of personal liability is absolute and without any exception whatsoever.
14. In the event of any material default by Tenant, Lender hereby agrees and acknowledges that with regard to any liability for the fulfillment or nonfulfillment of any of the terms or provisions of this Agreement, or for any action or proceeding that may be taken by the Lender against Tenant, that Lender, its successors and assigns, shall look solely to Tenant's interest in the Premises for satisfaction of each and every remedy of the Lender, its successors and assigns.
15. Notwithstanding anything to the contrary contained herein, this Agreement is subject to and contingent upon receipt by Tenant of a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed.

PREPARED BY:
GENERAL COUNSEL
PAYLESS SHOE SOURCE, INC.
P.O. BOX 1189
TOPEKA, KS 66601

ATTN: REBECCA JANOVSKY
LaSalle BANK NATIONAL ASSOC.
135 SO. LaSalle ST.
SUITE 1250
CHGO, IL. 60603



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Executed by Tenant this 30th day of October, 2000.

TENANT:

PAYLESS SHOESOURCE, INC.

Mary M Thomas
Assistant Secretary



ACKNOWLEDGMENT OF TENANT

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

On this 30th day of October, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Mary M. Thomas, Assistant Secretary of **PAYLESS SHOESOURCE, INC.**, a Missouri corporation, who is personally known to me to be the same person who executed the foregoing Subordination, Non-Disturbance and Attornment Agreement as Assistant Secretary of **PAYLESS SHOESOURCE, INC.**, and said Assistant Secretary duly acknowledged the execution of the same as an act of **PAYLESS SHOESOURCE, INC.**

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



[Signature]
Notary Public

My Commission expires: 4/30/2003

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Executed by Lender this 1st day of December, 2000.

LENDER:

LASALLE BANK NATIONAL ASSOCIATION

By: [Signature]
Title: 1st V.P.

ACKNOWLEDGMENT OF LENDER

STATE OF ILLINOIS
COUNTY OF COOK) ss:

On this 1st day of December, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came John B. JOSEPHSON, 1st VP of Lasalle Bank NA, who is personally known to me to be the same person who executed the foregoing Subordination, Non-Disturbance and Attachment Agreement as 1st VP of Lasalle Bank NA and said 1st VP duly acknowledged the execution of the same as an act of Lasalle Bank NA.

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

[Signature]
Notary Public

My Commission expires: _____



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Executed by Landlord this 5th day of December, 2000.

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LANDLORD:

E.C.K.E., LLC

By: [Signature]
Title: Member of Managing Member

ACKNOWLEDGMENT OF LANDLORD

STATE OF Illinois)
) ss:
COUNTY OF Cook)

On this 5th day of December, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Larry W. Pachter of _____, who is personally known to me to be the same person who executed the foregoing Subordination, Non-Disturbance and Attornment Agreement as _____ of _____, and said _____ duly acknowledged the execution of the same as an act of _____.

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

[Signature]
Notary Public

My Commission expires:



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EXHIBIT A

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LEGAL DESCRIPTION

PARCEL 1:

LOTS 2, 4, 5, 7 AND 8 IN DEER GROVE CENTRE, BEING A SUBDIVISION OF PART OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED DECEMBER 6, 1995 AS DOCUMENT 95849083, IN COOK COUNTY, ILLINOIS.

(EXCEPT THAT PARTS OF LOT 4 IN THE AFORESAID DEER GROVE CENTRE CONVEYED TO THE STATE OF ILLINOIS DEPARTMENT OF TRANSPORTATION BY WARRANTY DEED RECORDED APRIL 18, 1996 AS DOCUMENT 96294440 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERNMOST CORNER OF LOT 4 IN SAID SUBDIVISION; THENCE SOUTH 72 DEGREES 16 MINUTES 22 SECONDS WEST A DISTANCE OF 10.801 m [35.44 FEET]; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 4.734 m [15.53 FEET]; THENCE SOUTH 20 DEGREES 40 MINUTES 20 SECONDS WEST, A DISTANCE OF 14.450 m [47.41 FEET]; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 14.935 m [49.00 FEET]; THENCE NORTH 25 DEGREES 58 MINUTES 13 SECONDS WEST, A DISTANCE OF 15.038 m [49.34 FEET]; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 38.100 m [125.00 FEET]; THENCE NORTH 85 DEGREES 36 MINUTES 43 SECONDS WEST, A DISTANCE 42.985 m [141.03 FEET] TO A POINT ON THE NORTH LINE OF SAID LOT 4; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID NORTH LINE, A DISTANCE OF 122.602 m [402.24 FEET] TO THE POINT OF BEGINNING.)

PARCEL 2:

EASEMENTS FOR INGRESS, EGRESS, UTILITIES, CONSTRUCTION, MAINTENANCE, RECONSTRUCTION AND PARKING AS CREATED BY OPERATION AND EASEMENT AGREEMENT RECORDED DECEMBER 7, 1995 AS DOCUMENT 95852706 UPON, OVER AND ACROSS LOT 6 IN DEER GROVE CENTRE, BEING A SUBDIVISION OF PART OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 615 East Dundee Road, Palatine, Illinois

Parcel Identification Numbers: 02-11-209-006; 02-11-209-008; 02-11-209-009; 02-11-209-011; 02-11-209-012