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FIRST AMERICAN TITLE
ORDER # _____

Doc#: 0922644056 Fee: \$86.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/14/2009 01:05 PM Pg: 1 of 9

Store # 1874
Cicero, IL

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, formerly known as Volume Shoe Corporation, a Missouri corporation ("Tenant"), having its principal office at 3231 East 6th Street, Topeka, Kansas, 66607, **UNUM LIFE INSURANCE COMPANY OF AMERICA**, a Maine ("Lender"), whose address is 2211 Congress Street, C244 Portland, ME 04122-0590 and **HAWTHORNE WORKS CENTER, LTD LLC**, a Florida limited liability ~~company~~ ^{Partnership} ("Purchaser" or "Successor Landlord"), whose address is 340 Royal Mianciana Way, Suite 316, Palm Beach, FL 33480. (Tenant, Lender, and Purchaser/Successor Landlord are collectively referred to herein as the "Parties".)

WITNESSETH:

WHEREAS, Current Landlord LASALLE BANK NATIONAL ASSOCIATION and Tenant have entered into that certain Lease Agreement dated March 30, 1988 ("Lease"), which said Lease demises certain premises located at 2201 S Cicero Ave, Cicero, IL ("Premises"); and

WHEREAS, Lender has made or intends to make a loan ("Loan") to or for the benefit of Purchaser in connection with the purchase of the Premises by Purchaser from 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 Article 18 of the Lease; and

WHEREAS, the Parties 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. This Agreement is contingent upon Purchaser's closing of its purchase of the Premises. Tenant's obligations hereunder are of no effect until and unless such closing is fully completed in accordance with the terms of purchaser's purchase agreement. Upon the sale of the Premises to Purchaser by the Landlord and the execution of the Mortgage, Purchaser shall assume all of the rights, duties and obligations of the landlord under the lease. Promptly following such closing, Landlord will provide to Tenant a copy of the duly-recorded deed or other official recorded document evidencing the transfer of the Premises to Purchaser and Lender's interest therein. While the subordination affected hereby will be effective as of the closing, Tenant will have no obligation to attorn to Purchaser or lender in the event of foreclosure, until it has received such documentation. If the closing has not occurred within 60 days after Tenant's signing of this Agreement, this Agreement will be null and void and of no further effect without any action by any of the Parties.
2. The lien of the Lease shall be subordinate to the lien of the Mortgage.
3. 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.
4. 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.
5. If the interest of Successor 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 Successor 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

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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 Successor 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 Successor Landlord, or has exercised its right to receive payment of the rent. Successor Landlord hereby agrees that should Lender request Tenant make any payments directly to Lender or otherwise, Successor Landlord will hold Tenant harmless and allow Tenant to make such payments as requested without notice, demand or additional consent to or from Successor Landlord. The foregoing sentence shall be applicable notwithstanding any dispute between Lender and Successor Landlord as to the validity of the request for direct payment to Lender or otherwise of any monies owed by Tenant to Successor 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.
6. Provided Successor Landlord or Lender gives written notice to Tenant of Lender's address, Tenant will notify Lender simultaneously with Notice to Successor Landlord of any act, omission or default by Successor Landlord, which would give Tenant the right either immediately or after the lapse of a

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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 Successor Landlord and shall not subject Tenant to any claims by Lender. Tenant agrees that Lender shall have the right to cure Successor Landlord's default. However, notwithstanding anything herein to the contrary, Lender shall have no greater period of time than that given to Successor Landlord under the Lease to cure any such default. If Successor Landlord shall have used any part of such time allowed, Lender shall be subject to such time used by Successor Landlord unless otherwise agreed to in writing between Tenant and Lender.

7. 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:

If to Tenant: Payless ShoeSource, Inc.
 ATTN: Lease Administration
 Store # 1874
 P.O. Box 3560
 Topeka, KS 66601-3560
 Street Address: 120 E. 6th, Ste 102
 Topeka, KS 66603

with a copy to: Payless ShoeSource, Inc.
 ATTN: General Counsel
 Store # 1874
 P.O. Box 1189
 Topeka, KS 66601-1189
 Street Address: 3231 E. 6th
 Topeka, KS 66607

If to Lender: Unum Life Insurance Company of America
 2211 Congress Street
 C244 Portland, ME 04122-0590

If to Successor Landlord:
 Hawthorne Works Center, ^{Ltd} ~~LTE~~
 340 Royal Poinciana Way, Suite 316
 Palm Beach, FL 33480

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

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8. 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.
9. 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.
10. 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.
11. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Premises are situated.
12. 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.
13. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective heirs, successors and assigns.
14. 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.
15. 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.

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16. 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.

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Executed by Tenant this 20th day of July, 2009.

TENANT:

PAYLESS SHOESOURCE, INC.

Michael D. Heck

Michael D. Heck
Assistant Secretary

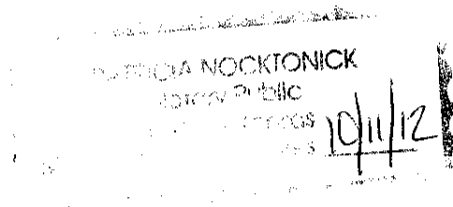


ACKNOWLEDGMENT OF TENANT

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

On this 20th day of July, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Michael D. Heck, 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.



Patricia Nocktonick

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Executed by Lender this 30th day of July, 2009.

LENDER:

Unum Life Insurance Company of America
2211 Congress Street
C244 Portland, ME 04122-0590

By: Stephanie Loiacono

Title: Stephanie Loiacono
Senior Investment Officer

ACKNOWLEDGMENT OF LENDER

STATE OF Maine)
) ss:
COUNTY OF Cumberland)

On this 30th day of July, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, Stephanie Loiacono, Senior Investment Officer of Unum Life Insurance Company of America who is personally known to me to be the same person who executed the foregoing Subordination, Non-Disturbance and Attachment Agreement as Senior Investment Officer of Unum Life Insurance Company of America and said Stephanie Loiacono duly acknowledged the execution of the same as an act of Unum Life Insurance Company of America

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

Julie P. Burnheimer
Notary Public

JULIE P. BURNHEIMER
NOTARY PUBLIC, MAINE #17081
COMMISSION EXPIRES NOVEMBER 26, 2018

My Commission expires: _____

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Executed by Successor Landlord this _____ day of _____, 2009.

Successor Landlord:

Hawthorne Works Center, ~~LLC~~ ^{Ltd}
By: Hawthorne Works GP, LLC,
its general partner

By: [Signature]
Title: Manager

ACKNOWLEDGMENT OF SUCCESSOR LANDLORD

STATE OF Florida)
) ss:
COUNTY OF Palm Beach)

On this 29th day of July, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Brian Kosoy, Manager of Hawthorne Works Center, Ltd who is personally known to me to be the same person who executed the foregoing Subordination, Non-Disturbance and Attornment Agreement as Manager of Hawthorne Works Center, Ltd and said Manager duly acknowledged the execution of the same as an act of Hawthorne Works Center, Ltd.

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



Notary Public
Karen L. Lynch

My Commission

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