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Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/20/2010 10:42 AM Pg: 1 of 10

THIS DOCUMENT WAS PREPARED BY
AND AFTER RECORDING RETURN TO:

DIKEMA GOSSETT PLLC
10 SOUTH WACKER DRIVE
SUITE 2300
CHICAGO, IL 60606
ATTN: C. ELIZABETH DRAKE

SUBORDINATION, NON-DISTURBANCE
AND ATTORNEY AGREEMENT

Box 400-CTCC

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Store # 2135 RL
Chicago, 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, ("Tenant"), having its principal office at 3231 East 6th Street, Topeka, Kansas, 66607, **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois state chartered bank ("Lender"), whose address is 120 South LaSalle Street, Chicago, IL 60603, Attn: Maria K. Alexakis, and **SCOTTSDALE LIMITED PARTNERSHIP**, an Illinois limited liability company ("Landlord"), whose address is c/o A & R Katz Management Inc, 3175 Commercial Avenue, Northbrook, IL 66062. (Tenant, Lender and Landlord are collectively referred to herein as the "Parties".)

WITNESSETH:

WHEREAS, Landlord (or Landlord's predecessor(s) in interest) and Tenant (or Tenant's predecessor(s) in interest) have entered into that certain Lease Agreement dated , ("Lease"), which said Lease demises certain premises located at 8055 S Cicero Avenue, Chicago, IL , ("Premises"); 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, 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.

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WITH A COPY TO:
Payless ShoeSource, Inc.
ATTN: General Counsel
Store # 2135 RL
P.O. Box 1189
Topeka, KS 66601-1189

If to Lender: The Privatebank and Trust Company
120 South LaSalle Street
Chicago, IL 60603
Attn: Maria K. Alexakis

If to Landlord: Scottsdale Limited Partnership
c/o A & R Katz Management Inc
3175 Commercial Avenue
Northbrook, IL 66062

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.
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.

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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.

Property of Cook County Clerk's Office

UNOFFICIAL COPY**CHICAGO TITLE INSURANCE COMPANY**

ORDER NUMBER: 1401 008497612 D2
 STREET ADDRESS: SCOTTSDALE CENTER, 7971 S. CICE RO AVE.
 CITY: CHICAGO, IL 60652 COUNTY: COOK
 TAX NUMBER: 19-34-100-004, 006, 007

LEGAL DESCRIPTION:

LOT A IN SCOTTSDALE FOURTH ADDITION BEING RAYMOND L. LUTGERTS RESUBDIVISION OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, EXCEPT THAT PART OF SAID LOT "A" DEEDED TO THE STATE OF ILLINOIS AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE PRESENT SOUTH LINE OF WEST 79TH STREET WITH THE PRESENT EAST LINE OF SOUTH CICE RO AVENUE, SAID POINT OF INTERSECTION BEING DISTANT, 50 FEET SOUTH, MEASURED AT RIGHT ANGLES FROM THE NORTH LINE OF SAID SECTION 34 AND ALSO DISTANT, 50 FEET EAST, MEASURED AT RIGHT ANGLES FROM THE WEST LINE OF SECTION 34; THENCE EAST ALONG SAID SOUTH LINE OF WEST 79TH STREET, 64.00 FEET, THENCE SOUTHWESTERLY ALONG THE ARC OF A CIRCLE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 50 FEET, A DISTANCE OF 78.54 FEET TO A POINT OF TANGENCY, DISTANT 14 FEET EAST MEASURED AT RIGHT ANGLES FROM SAID EAST LINE OF THE SOUTH CICE RO AVENUE; THENCE SOUTH PARALLEL WITH SAID EAST LINE OF SOUTH CICE RO AVENUE (TO WHICH THE LAST DESCRIBED CURVED LINE IS TANGENT) 271.50 FEET; THENCE SOUTHWESTERLY IN A STRAIGHT LINE 428.73 FEET TO AN INTERSECTION WITH SAID EAST LINE OF SOUTH CICE RO AVENUE; THENCE NORTH ALONG SAID EAST LINE OF SOUTH CICE RO AVENUE, 750 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.