

UNOFFICIAL COPY

*Inducting, not of (Lender) for in opt to
to bank and not of (Lender) for in opt to
to bank and not of (Lender) for in opt to*

1. Tenant's interest in the Lease, and all rights of Tenant thereunder shall be and hereby are declared to be subject and subordinate to the Mortgage pursuant and subject to the terms and provisions hereof. The term "Mortgage", as used herein, shall include the Mortgage and all other Loan Documents described therein and any and all amendments, supplements, modifications, renewals, or replacements thereto, thereof or therefor. Tenant

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the making of the Loan and other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

WHEREAS, Lender has required the execution of this Agreement as a condition to making such Loan.

WHEREAS, Lender is the proposed holder of a Note to be secured by a Mortgage upon the Demised Premises (the "Mortgage"); and

WHEREAS, by lease by and between Chicago Title & Trust Company, as Trustee under Trust Agreement dated May 1, 1990, known as Trust No. 095464 (the "Trust") and Pamela Matthew Stevens Partners (hereinafter together with any other Landlord under the Lease prior to Lender collectively referred to as the "Landlord") and Tenant, dated May 7, 1990 as amended by a certain First Amendment to Lease dated as of June 5, 1990 ("Lease"), Tenant has leased certain space in a building located at 2801 South Cicero Avenue, situated in the Town of Cicero and State of Illinois, more particularly described in Exhibit "A" attached hereto and hereby made a part hereof (said area subject to the lease being herein called the "Demised Premises"); and

W I T N E S S E T H :

2/00

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made and entered into as of this 5th day of June, 1990, by The Wholesale Club, Inc., an Indiana corporation ("Tenant"), whose principal place of business is at 7260 Shadeland Station, P.O. Box 50300, Indianapolis, Indiana 46250, to and for the benefit of The Exchange National Bank of Chicago, 120 South LaSalle Street, Chicago, Illinois 60602-3400, a national banking association ("Lender").

*72-54-858
D-3*

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

90346185

1990 JUL 19 11:03 26

TJCK01593.CMPAB071390

90346185

COOK COUNTY, ILLINOIS FILED FOR RECORD

9 0 3 4 6 1 8 5

(5)

90346185

90346185

also agrees that Lender may elect to have the Lease be a prior lien to the Mortgage, and in the event of such election and upon written notification by Lender to Tenant to that effect, the Lease shall be deemed prior in lien to the Mortgage.

2. Lender does hereby agree that the rights of Tenant under the Lease including, without limitation, Tenant's Right of First Refusal set forth in Article XX of the Lease, and the provisions of the Lease relating to the application of all insurance proceeds and condemnation awards towards restoration of the Demised Premises shall remain in full force and effect and its possession and quiet enjoyment of the Demised Premises thereunder shall remain undisturbed by Lender, its successors and assigns during the term of the Lease, and during any renewal or extension thereof in accordance with its terms subject to the Landlord's termination of such rights in the event of a default by Tenant pursuant to the Lease.

3. After the receipt by Tenant of notice from Lender of completion of a foreclosure under the Mortgage or the Lender has received a conveyance of the Demised Premises in lieu of foreclosure or of a beneficial interest in the Demised Premises in lieu of foreclosure and after the execution of the assumption required by Section 9.01 of the Lease, Tenant will attorn to and recognize Lender, its successors and assigns, or any other purchaser at the foreclosure sale, as its substitute Landlord under the Lease, and, having thus attorned, Tenant's possession of the Demised Premises covered by the Lease shall not thereafter be disturbed by Lender, its successors or assigns during the term of the Lease, or during any renewal or extension thereof in accordance with its terms, subject to the Landlord's termination of such rights in the event of a default by Tenant, pursuant to the Lease. The parties shall execute and deliver, upon request, appropriate agreements of attornment and recognition, but this Agreement shall be deemed to be self-operative, and no such separate agreements shall be required to effectuate the foregoing attornment and recognition. Any such attornment and recognition of a substitute Landlord shall be upon all of the terms, covenants, conditions and agreements as are set forth in the Lease.

4. In the event that Lender becomes the owner of the Demised Premises or the beneficial owner thereof as a result of a foreclosure sale under the Mortgage or a transaction in lieu of foreclosure having the effect of making Lender the fee or beneficial owner of the Demised Premises (hereinafter referred to as a "Transaction in Lieu Of Foreclosure"), Lender shall not be liable for any act or omission of any prior Landlord under the Lease except for a "Continuing Default." As

50346185

(b) Subject to the terms of the First Amendment to Lease dated as of June 5, 1990, Tenant has approved the leasing of a certain portion of the Site to Pacella Trucking Express, Inc. and

(a) Tenant has approved the exceptions contained in Schedule B of Chicago Title Insurance Commitment No. 12 54 858, dated May 11, 1990 (except exception No. 25), the ~~survey~~ ~~containing materials~~ and the zoning letter for the Town of Cicero pursuant to, respectively, Sections 28.01(c), (e) and (f) of the Lease.

6. Tenant agrees, acknowledges and confirms to Lender that as of the date hereof:

5. Lender and Tenant shall be entitled to specific performance of the covenants, agreements and rights contained in this Agreement. It is the express intent of all parties hereto that all remedies provided at law or in equity, including the right to specific performance as herein provided, shall be cumulative.

Tenant shall have no claim against Lender or any such other person, party or entity resulting from, and neither Lender nor any such other person, party or entity shall be liable for, any act or omission of, and/or breach of the Lease by, any prior landlord under the Lease, and the rights of Lender or any such other person, party or entity in and to the Demised Premises and in, to and under the Lease shall not be subject to any right of set-off or defense which Tenant may have, other than pursuant to the Lease, against any prior landlord under the Lease.

(b) Bound by any rent paid by Tenant more than thirty (30) days in advance of the due date thereof.

used herein a "Continuing Default" shall mean (i) any continuing and ongoing default under the Lease by a prior landlord which may have commenced prior to the time Lender becomes the fee or beneficial owner of the Demised Premises and for which Lender shall have the legal capability of remedying after it becomes the fee or beneficial owner of the Demised Premises and (ii) shall include only the period after Lender becomes the fee or beneficial owner of the Demised Premises. Lender shall be obligated to cure a continuing default within the time provided in the Lease after it becomes the fee or beneficial owner of the Demised Premises. Notwithstanding the foregoing, a continuing and ongoing default created by a prior landlord under either Article 6.01 or Article 6.02 of the Lease shall not be deemed to be a continuing default; or

90346185

Each party hereto may change its above-stated address from time to time by serving written notice of the change upon the other

Robert A. Rose, Esquire
Klineman, Rose, Wolf and Wallack
135 North Pennsylvania, Suite 2100
Indianapolis, Indiana 46207

With a copy to:

The Wholesale Club, Inc.
7260 Shadeland Station
P.O. Box 50300
Indianapolis, Indiana 46250

If to Tenant:

The Exchange National Bank of Chicago
120 South LaSalle Street
Chicago, Illinois 60602-3400
Attn: Matthew J. Napoli
Commercial Banking Officer

If to Lender:

7. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing, and shall be deemed given or served when sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

(e) This Agreement satisfies the requirements of Article XXVI of the Lease and Tenant agrees to execute a substantially similar agreement with any future mortgagee of the Demised Premises.

(d) Tenant approves the transfer of legal title of the Demised Premises to the Town of Cicero, Illinois (the "Town"), and the retransfer of such title from the Town to the Trust or to Lender pursuant to a certain Redevelopment Agreement, dated as of June 15, 1990, between the Town and Lender and agrees that such transfer shall not be subject to Articles XX or IX of the Lease. Articles XX and IX of the Lease shall continue to be applicable to all other transfers covered thereby.

(c) Tenant's indentities pursuant to Section 10.02 of the Lease shall inure to the benefit of Lender and future mortgagees of the Demised Premises, in their respective capacities as Lender or mortgagees, or after a foreclosure or Transaction in Lieu Of Foreclosure, as Lender.

agrees that such leasing and the operation permitted by such Lease is permitted pursuant to the Lease, as so amended.

50346185

Pay 333

Thomas J. Kelly
Pedersen & Hout
180 North LaSalle Street
Suite 3400
Chicago, Illinois 60601

This instrument was prepared by and, after recording, should be returned to:

By Mark A. [Signature]
Its Associate VP.

The Exchange National Bank of Chicago, a national banking association

By Douglas W. Harden, Senior Vice President - Real Estate

The Wholesale Club, Inc., an Indiana corporation

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and delivered as of the date first above written.

10. Although dated as of June 5, 1991, this Agreement has been executed by the parties on the dates of their respective acknowledgements.

9. This Agreement shall be binding upon and shall inure to the benefit of Tenant and Lender and their respective heirs, legal representatives, successors and assigns.

8. This Agreement may not be amended or modified in any manner other than by an agreement in writing signed by Tenant and Lender.

party hereto as above provided at least ten (10) days prior to the effective date of said change.

90346185

Property of Cook County Clerk's Office

My Commission Expires: 7-15-92

Notary Public

[Handwritten Signature]

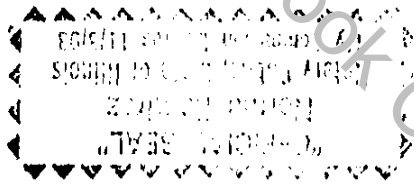
GIVEN under my hand and notarial seal this 16th day of July, 1990.

I, Robert L. [unclear], a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Douglas W. Harden, as Senior Vice President - Real Estate of The Wholesale Club, Inc., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, as such Senior Vice President - Real Estate of said Corporation, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

STATE OF INDIANA)
COUNTY OF MARION)

90346185

Property of Cook County Clerk's Office



My Commission Expires: _____
Notary Public
Norma Ramirez

Given under my hand and notarial seal this 15th day of July 1970

I, Norma Ramirez, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Norma Ramirez, Assistant Vice President of the Exchange National Bank of Chicago, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Assistant Vice President of said bank, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and (a) the free and voluntary act of said bank, for the uses and purposes therein set forth.

STATE OF ILLINOIS)
COUNTY OF COOK)

58196185

ALL THAT PART OF THE NORTH WEST 1/4 OF SECTION 27, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, CONVEYED TO THE WESTERN ELECTRIC COMPANY INCORPORATED BY DEED RECORDED SEPTEMBER 9, 1930 AS DOCUMENT NUMBER 10743717 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHERE THE NORTHERLY LINE OF WEST 26TH STREET WILL INTERSECT THE EASTERLY LINE OF SOUTH 48TH AVENUE, SAID POINT BEING 33 FEET NORMALLY DISTANT FROM AND EASTERLY OF THE WESTERLY LINE OF SAID QUARTER SECTION, AND 33 FEET NORMALLY DISTANT FROM AND NORTHERLY OF THE SOUTHERLY LINE OF SAID QUARTER SECTION; THENCE EASTERLY, ALONG SAID NORTHERLY LINE OF WEST 26TH STREET, A DISTANCE OF 522.24 FEET; THENCE NORTHERLY, ALONG A LINE PARALLEL TO SAID EASTERLY LINE OF SOUTH 48TH AVENUE, TO A POINT 58 FEET NORMALLY DISTANT FROM AND SOUTHEASTERLY OF THE CENTER LINE OF THE ORIGINAL MAIN TRACK OF CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; THENCE SOUTHWESTERLY, ALONG A LINE 58 FEET NORMALLY DISTANT FROM, SOUTHEASTERLY OF AND PARALLEL TO THE CENTER LINE OF SAID ORIGINAL MAIN TRACK, A DISTANCE OF 541.4 FEET, MORE OR LESS, TO ITS INTERSECTION WITH SAID EASTERLY LINE OF SOUTH 48TH AVENUE; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF SOUTH 48TH AVENUE, A DISTANCE OF 70.73 FEET, MORE OR LESS, TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF THE NORTH 1/2 OF THE SOUTH WEST 1/4 OF THE SOUTH WEST 1/4 OF SECTION 27, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CENTER LINE OF VACATED CARL STREET IN BAKER'S SUBDIVISION OF THE SOUTH EAST 1/4 AND THE NORTH 1/2 OF THE SOUTH WEST 1/4 OF THE SOUTH WEST 1/4 OF SAID SECTION 27 AND LYING WEST OF A LINE DRAWN FROM A POINT ON THE NORTH LINE OF SAID NORTH 1/2, 180.00 FEET WEST OF THE NORTH EAST CORNER THEREOF TO A POINT ON THE SOUTH LINE OF SAID NORTH 1/2, 175.00 FEET EAST OF THE CENTER LINE OF SAID VACATED CARL STREET, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE NORTH WEST 1/4 OF THE SOUTH WEST 1/4 OF SECTION 27, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THE FOLLOWING:

THE NORTH 33.0 FEET THEREOF; THE WEST 33.0 FEET THEREOF; THAT PART CONVEYED TO THE STATE OF ILLINOIS FOR THE WIDENING OF SOUTH CICERO AVENUE AND WEST 26TH STREET PER DOCUMENT NUMBER 18070199 RECORDED JANUARY 25, 1961, PARCEL NUMBER 21; AND THAT PART THEREOF FALLING EAST OF A LINE DRAWN FROM A POINT ON THE SOUTH LINE OF SAID NORTH WEST 1/4, 180.00 FEET WEST OF THE SOUTH EAST CORNER THEREOF TO A POINT ON THE SOUTH LINE OF WEST 26TH STREET (BEING A LINE 33.0 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SOUTH WEST 1/4) 219.69 FEET WEST OF THE EAST LINE OF SAID NORTH WEST 1/4 IN COOK COUNTY, ILLINOIS.

PARCEL 1:

THE NORTH WEST 1/4 OF THE SOUTH WEST 1/4 OF SECTION 27, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING

EXHIBIT A

The Cross-hatched areas drawn above represent the Demised Premises

90346185

