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NON-DISTURBANCE, ATTORNMENT ESTOPPEL AND SUBORDINATION AGREEMENT 10584 章 記憶 #-ア4ー1らヨロアア

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COOK COUNTY RECORDER

THIS NON-DISTURBANCE, ATTORNMENT, ESTOPPEL AND SUBORDINATION AGREEMENT is made and entered into as of November 18, 1992, by and among AEW #200 TRUST, a Massachusetts nominee trust ("Mortgagee"), WABAN INC., a Delaware corporation (("Lessee"), and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, as Trustee under a Trust Agreement dated June 24, 1991, and known as Trust No. 113337-05 ("Lessor").

#### RECITALS

- Mortgagee interds to loan to Lessor the principal sum of Fourteen Million Five Hundred Thousand and No/100 Dollars (\$14,500,000), such loan to be evidenced by a Promissory Note and to be secured by a Mortgage and Security Agreement (the "Mortgage"), which Mortgage will constitute a lien or encumbrance on that certain real property more particularly described therein (the "Troperty").
- Lessee is the holder of a leasthold estate covering the Property (the "Demised Premises") pursuant to the terms of that certain lease dated November 7, 1991, as amended by Amendment A dated , 1992 (the "Lease").
- Lessee, Lessor and Mortgagee desire to confirm their understanding with respect to the Lease and the Mortgage.

#### AGREEMENT

- Lessee's possession and occupancy of the Demised Framises and its rights under the Lease shall not be interfered with or disturbed by Mortgagee during the term of the Lease or any extension thereof duly exercised by Lessee, except in accordance with the Lease.
- If the interests of any prior lessor under the Lease (including Lessor) shall be transferred to and/or owned by Mortgagee by reason of judicial foreclosure, power-of-sale foreclosure or other proceedings brought by it, Lessee shall be bound to Mortgagee under all of the terms, covenants and conditions of the Lease for the balance of the remaining term thereof and any extension thereof duly exercised by Lessee, with the same force and effect as if Mortgagee were the lessor under the Lease, and Lessee does hereby attorn to Mortgagee as its lessor, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the

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parties hereto immediately upon Mortgagee's succeeding to the interest of the Lessor under the Lease; provided, however, that Lessee shall be under no obligation to pay rent to Mortgagee until Lessee receives written notice from Mortgagee (without any requirement of further notice from Lessor) that it has succeeded to the interest of the Lessor under the Lease, as aforesaid, or that it has terminated the license granted to Lessor to collect rents as provided in the Mortgage or any assignment of leases and rents. The respective rights and obligations of Lessee and Mortgagee, as Lessor, upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extension, shall be and are the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein, except that Article KY thereof shall thereafter be of no further force or effect. Mortgagee shall not be personally liable for any of the agreements of Lindlord under the Lease, except that such agreements shall, as the case may be, be binding upon Mortgagee only to the extent of any ownership interest in the Shopping Center it may hereafter acquire, and the rents, proceeds and profits therefrom. Nothing in the immediately preceding sentence shall be construed as a bar to any injunctive relief available to Lessee.

- 3. If Mortgagee shall succeed to the interest of any prior lessor under the Lease (including Lessor), as aforesaid, Mortgagee shall, subject to the last sentence of this Section 3, be bound to Lessee under all of the terms, covenants and conditions of the Lease; provided, however, that Mortgagee shall not be:
  - (a) Liable for any damages then accrued as the result of any acts or omissions of any prior lessor (including Lessor); or
  - (b) Subject to any offsets or defenses which Lessee then has against any prior lessor (including Lessor); or
  - (c) Bound by any rent or additional rent or advance rent which Lessee has paid for more than the current month to any prior lessor (including Lessor) except as provided in the Lease; or
  - (d) Bound by any amendment or modification of the Lease hereafter made without its consent and written approval.

Neither Mortgagee nor any other party who, from time to time, shall be included in the definition of Mortgagee hereunder shall have any liability or responsibility under or pursuant to the terms of this Agreement after it ceases to own a fee interest in or to the Property, provided that the transferee thereof from

Mortgagee shall have agreed with Lessee, in writing in recordable form, that such transferee shall thereafter be liable and responsible for performing and observing all of the terms and conditions on the part of the Lessor to be performed or observed under this Agreement.

- 4. Subject to the terms of this Agreement (including but not limited to those in Section 2 hereof), the Lease now is, and shall at all times continue to be, subordinate to the lien of the Mortgage and to any and all renewals, modifications, extensions, substitutions and/or consolidations of the Mortgage.
- 5. The term "Mortgagee" shall be deemed to include Mortgagee or any of its successors and assigns, including anyone who shall have succeeded to the Lessor's interest under the Lease by, through or under judicial foreclosure, or power-of-sale foreclosure or other proceedings brought pursuant to the Mortgage, as aforesaid.
- Lessor and Lessee certify to Mortgagee as follows: (a) that the Lease is presently in cull force and effect and unmodified or changed; (b) that to the lest of their respective knowledge Lessor has completed "Landlord's Construction Work" (as defined in the Lease) in accordance with the terms of the Lease and Lessee is in possession of the Demised Premises; (c) that the "Commencement Date" (as defined in the Lease) was September 4, 1992 and that Lessee's obligation to pay rent under the Lease commenced as of such date; (d) that the Demised Premises consist of approximately 109, 952 square feet of floor area and that the initial minimum rent under the Lease is \$334,592 per year; (e) that minimum rent has been paid through Movember 30, 1992; (f) that any termination right, rental abatement right or rental offset right set forth in Section 4.4, 4.6, 4.7 or 4.8 of the Lease has been terminated or waived; (g) that no rent under the Lease has been paid more than one month in advance of its due date; (h) that, to their respective knowledge, no default exists under the Lease on the part of Lessor or Lessee; (i) that Lessee, as of this date, has no charge, lien or claim of offset under the Lease or otherwise, against rents or other cranges due or to become due thereunder; (j) that the Lease constitutes the entire rental agreement between the parties and that Mortgagee shall have no liability or responsibility with respect to any security deposit of Lessee; (k) that Lessee has no right or interest in or under any contract, option or agreement involving the sale of the Demised Premises; and (1) that to the best of Lessee's knowledge, as of this date, no right of termination, rental abatement or rental offset has accrued under Section 4.5 of the Lease.

- 7. In the event Lessor shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Lessee shall give Mortgagee a copy of any written notice thereof sent to Lessor and Mortgagee shall have the right (but not the obligations) to cure such failure, and Lessee shall not take any action with respect to such failure under the Lease, including without limitation any action in order to terminate, rescind or avoid the Lease or to withhold any rent thereunder, for the same period of time after Mortgagee's receipt of such copy as is allowed to Lessor under the Lease for the curing thereof after receipt of such notice thereof.
- 8. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the parties hereto and their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.
- 9. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.
- 10. All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be in writing and shall be considered properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by prepaid telegram or telex, or by telephone facsimile, or by prepaid overnight delivery service which delivers only upon signed receipt of the addressee. Notice so mailed shall be effective on the third day after deposit in the mails. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be:

Lessor: American National Bank and Trist

Company of Chicago Trust No. 112357-05. c/o Hiffman Shaffer Anderson, Inc.

180 North Wacker Dr., Suite 500

Chicago, Illinois 60606

Mortgagee: AEW #200 Trust

c/o Aldrich, Eastman & Waltch, L.P.

225 Franklin Street Boston, MA 02110

Attention: J. Grant Monahon

with a copy to: Hill & Barlow Corporation

One International Place

Boston, MA 02110

Attention: Gregory P. Bialecki, Esq.

preparod by

Lessee:

Waban Inc. Mercer Road

P.O. Box 9600

Natick, Massachusetts 01760

Attention: Vice President-Finance

with a copy to:

Home Club Inc.

140 Orangefair Mall

Suite 100

Fullerton, California 92632 Attention: Vice President --

Real Estate

Provided, however, that any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of 30 days' notice to the other parties in the manner set forth hereinabove.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

AEW # . CO DRUST

"Mortgagee"

WABAN INC

-// .

Senior Vice President

"Lessee"

COMMONWEALTH OF MASSACHUSETTS )

)ss.

COUNTY OF MIDDLESEX

The foregoing instrument was acknowledged before me this 18th day of November, 1992, by John F. Levy, President and Dale N. Garth, Senior Vice President of Waban Inc., a Delaware corporation, on behalf of the corporation.

mary J. Slattery

MARY T. SLATTERY
Notary Public
My Commission Expl. as March 12, 1993

# MEDITORN MAGIZONRY CANIL RAID GIRLIGIB COMBANY

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee as aforesaid

By:

itle:

**UNOFFICIAL COPY** 

hust officer

"Lessor"

(Seal)

Attest:

Title

ASSISTANT OF RETARY

BIAL/AEWBSC/AAO

This instrument is executed by the undersigned Land Trurier, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed and all of the warrantles, indemnities, representations, covenants, undertaking, and agreements herein made on the part of the Trustee are undertaken by it solely in its sepacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shell at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking of agreement of the Trustee in this instrument.

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#### COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

January 24, 1994

I, Muth anni, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Mark P. Snyderman, personally known to me to be trustee of AEW #200 Trust, a Massachusetts nominee trust, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such crustee of said trust, he signed and delivered the said instrument as his free and voluntary act and deed and as the free and voluntary act and deed and as the free and voluntary act and deed of said trust, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24 day of January, 1994.

Notary Public

My Commission Expires: 2/5

bial/aew/at9

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STATE OF ILLINOIS	)
COUNTY OF COOK	SS
	/ Lhu.
L. M. SUVIEN	HEREBY CERTIFY that Gregory S. Rusppytty, in as
SECOND the State aforesaid, DO	
American National Bank on	ent and <u>Joven Cravelly</u> as <u>horself</u> Wof nd Trust Company of Chicago, as Trustee under Trust
Arreament dated lune 24	, 1991 and known as Trust No. 113337-05, who are
nersonally known to me to	be the same persons whose names we subscribed to
the foregoing instrume	ent as such President and
	try of said Corporation, respectively, appeared before
me this vay in person and	acknowledged that, pursuant to authority given by the
Board of Directors of sai	d corporation, they signed and delivered the said
instrument as their free an	id voluntary act and as the free and voluntary act of
said Corporation for us	es and purposes set forth therein; and said
Secret	ary did then and there acknowledge that he, as
custodian of the corporate	seal of said Corporation did affix the corporate seal of
said Corporation to said in	strument as his free and voluntary act and as the free
and voluntary act of sale of	orporation for the uses and purposes set forth therein.
Witness my hand a	and notarial seal this FEB 8 1994 day of
, 1993.	2 13
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	Notary Public
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My Commission Expires	Y)
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10 11	imministration of the second
(Seal)	CPFICIAL SEAT
	L.M. SOVIENSKI
	NOVARY PUBLIC, STATE OF HUNON 🦫
	My Commission Expires 06/27/96

September 1

#### EXHIBIT A

#### Legal Description

#### PARCEL 1:

LOTS 3 AND 4 IN BEDFORD CITY SQUARE RESUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN RECORDED JUNE 10, 1992 AS DOCUMENT NUMBER 92413208, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

EAGEMENTS FOR INGRESS, EGRESS, UTILITIES, AND PARKING, AS DESCRIBED IN THAT CERTAIN OPERATION AND EASEMENT AGREEMENT DATED FEBRUARY 12, 1992 AND RECORDED ON FEBRUARY 20, 1992, WITH THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS, AS DOCUMENT NUMBER 92-106810 AND AS AMENDED BY AMENDMENT DATED AUGUST 29, 1992 RECORDED OCTOBER 30, 1992 AS DOCUMENT NUMBER 92809625, OVER, UPON AND ACROSS THE FOLLOWING PARCEL OF LAND:

LOTS 1 AND 2 IN BEDFORD CITY SQUARE, BEING A SUBDIVISION IN THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MUNICIPAL MUNICI

P.I.N. Nos.:

19-28-201-006

19-28-201-009 19-28-201-013

19-28-201-013

19-28-201-014

19-28-201-016

19-28-201-020

19-28-201-030

19-28-201-031

Common Address:

Bedford City Square Shopping Center

Bedford Park, Illinois

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