

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

Unit No. BU-644  
493735 LD

97080352

SUBORDINATION, NON-DISTURBANCE  
AND ATTORNEY AGREEMENT

MORRIS W. CARTER  
PREPARED BY

THIS AGREEMENT is made and entered into as of September 15, 1997, by and between WELLS FARGO BANK, NATIONAL ASSOCIATION, as agent for itself and certain other banks ("Lenders"), their respective successors and assigns (such agent hereinafter referred to as "Mortgagee" or "Wells Fargo") and MICHIGAN SPORTING GOODS DISTRIBUTORS, INC. ("Lessee").

RECITALS

A. Lenders are now or will be the owners and holders of certain Promissory Note(s) in the aggregate principal sum of up to Eighty Million Dollars (\$80,000,000) secured, inter alia, by one or more mortgages (collectively the "Mortgages") of even date therewith, which Mortgages constitute a lien or encumbrance on that certain real property more particularly described in the attached Exhibit "A" (the "Property").

B. Lessee is the holder of a leasehold estate covering a portion of the Property (the "demised premises") pursuant to the terms of that certain lease (the "Lease") dated January 22, 1988, and executed by Lessee and Gary Joint Venture, an Ohio general partnership ("Lessor").

C. Lessee and Mortgagee desire to confirm their understanding with respect to the Lease and the Mortgages.

AGREEMENT

1. So long as Lessee is not in default (beyond any period given Lessee to cure such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on Lessee's part to be performed, Lessee's possession and occupancy of the demised premises shall not be interfered with or disturbed by Mortgagee during the term of the Lease or any extension thereof duly exercised by Lessee.

2. If the interests of 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, or by any other manner, including but not limited to Mortgagee's exercise of its rights under any assignment(s) of leases and rents, and Mortgagee succeeds to the interest of the Lessor under the Lease, 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-

28.00

Chicago Title Insurance Company

operative without the execution of any further instruments on the part of any of the 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 that it has succeeded to the interest of Lessor under the Lease or that it has the license granted to Lessor to collect rents as provided in the Mortgages. Subject to the terms of this Agreement, the respective rights and obligations of Lessee and Mortgagee 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.

3. If Mortgagee shall succeed to the interest of Lessor under the Lease, 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 act or omission of any prior lessor (including Lessor); or
- (b) except as expressly permitted under the Lease, subject to any offsets or defenses which Lessee might have against any prior lessor (including Lessor): or
- (c) bound by any rent or additional rent or advance rent which Lessee might have paid for more than the current month to any prior lessor (including Lessor); or
- (d) bound by any amendment or modification of the Lease made without its consent and written approval; or
- (e) bound by any covenant to undertake or complete any construction of the Property (provided the foregoing shall not limit any obligation of Mortgagee, as Lessor, to maintain, repair, replace or restore the Property); or
- (f) bound by any obligation of Lessor to make any payment to Lessee, except that
  - (i) Mortgagee shall be liable for the timely return of any security or other deposit, and
  - (ii) Mortgagee shall be liable on account of any prepayments of rent or other charges owing to Lessee if the funds are actually received by Mortgagee.

Neither Wells Fargo 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 described on Exhibit "A". Notwithstanding anything to the contrary contained herein, officers, directors, shareholders, agents, servants and employees of Mortgagee shall have no personal liability to Tenant.

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, subject and subordinate in each and every respect, to the Mortgages and to any and all renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Mortgages.

5. The term "Mortgagee" shall be deemed to include Wells Fargo, any of its successors and assigns, including anyone who shall have succeeded to Lessor's interest by, through or under judicial or power-of-sale foreclosure or other proceedings brought pursuant to the Mortgages, or deed in lieu of such foreclosure or proceedings, or otherwise.

6. In the absence of the prior written consent of Mortgagee, Lessee agrees not to do any of the following: (a) prepay the rent under the Lease for more than one (1) month in advance, (b) enter into any agreement with the Lessor to amend or modify the Lease, or (c) voluntarily surrender the demised premises or terminate the Lease without cause.

7. In the event Lessor shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Lessee shall give written notice thereof to Mortgagee and Mortgagee shall have the right (but not the obligation) to cure such failure, 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, until the later of the date provided for cure under the Lease or thirty (30) days after receipt by Mortgagee of such written notice from Lessee to Mortgagee.

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 and assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

9. Other than the Lease itself, this Agreement supersedes any and all agreements between Mortgagee (or any predecessor to Mortgagee) and Lessee (or any predecessor to Lessee) prior to the date hereof with respect to the Lease and the Mortgages.

10. 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.

11. All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be in writing and shall be considered as properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the intended addressee,

or by prepaid telegram. Notice so given in person or by telegram shall be effective upon its deposit. Notice so given by mail shall be effective two (2) days after deposit in the United States mail. 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:

**Lessee:**

Michigan Sporting Goods Distributors, Inc.  
3070 Shaffer Road, S.E.  
Grand Rapids, MI 49512  
Attn: Vice President of Real Estate

**Mortgagee:**

Wells Fargo Bank, National Association  
225 West Wacker Drive  
Suite 2550  
Chicago, IL 60606  
Attn: Senior Loan Officer

**With a copy to:**

Wells Fargo Real Estate Group, Inc.  
420 Montgomery Street, Floor 6  
San Francisco, CA 94163  
Attn: Chief Credit Officer

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 thirty (30) days notice to the other parties in the manner set forth herein above.

(SIGNATURE PAGE FOLLOWS)

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

Mortgagee:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as agent as described above

[CORPORATE SEAL]

By: Thomas Schuman  
Its: (Vice) President

Attest:

Jean M. Zito

Lessee:

MICHIGAN SPORTING GOODS DISTRIBUTION, INC.

[CORPORATE SEAL]

By: Tom L. Wilkerson  
Its: (Vice) President ~~Real Estate~~

Attest:

Patricia J. O'Brien  
(Assistant) Secretary

TENANT  
ACKNOWLEDGMENT FOR CORPORATION

STATE OF MICHIGAN )  
COUNTY OF KENT )

I, SHELLEY P. LEWIS, a Notary Public of the County and State aforesaid, certify that PETER FULVI personally came before me this day and acknowledged that (s)he is ASSISTANT Secretary of MICHIGAN SPORTING GOODS DIST., INC., a MICHIGAN corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its VICE President, sealed with its corporate seal and attested by him/her as its ASSISTANT Secretary.

WITNESS my hand and notarial seal or stamp, this 16<sup>TH</sup> day of SEPTEMBER, 1997.

Shelley P. Lewis  
Notary Public

My Commission Expires:

OCTOBER 12, 1998

**SHELLEY P. LEWIS**  
Notary Public, Kent County, MI  
My Commission Expires October 12, 1998

[Notarial Seal/Stamp]

TENANT  
ACKNOWLEDGMENT FOR INDIVIDUAL

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and notarial seal or stamp, this \_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

[Notarial Seal/Stamp]

TENANT  
ACKNOWLEDGMENT FOR PARTNERSHIP  
WITH INDIVIDUAL GENERAL PARTNER(S)

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, general partner of \_\_\_\_\_, a general partner of \_\_\_\_\_, a \_\_\_\_\_ Partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of said partnership.

WITNESS my hand and notarial seal or stamp, this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
[Notarial Seal/Stamp]

TENANT  
ACKNOWLEDGMENT FOR PARTNERSHIP  
WITH CORPORATE GENERAL PARTNER(S)

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that (s)he is the \_\_\_\_\_ Secretary of \_\_\_\_\_, a \_\_\_\_\_ corporation and that by the authority duly given and as the act of the corporation, acting as general partner of \_\_\_\_\_, a \_\_\_\_\_ partnership, and as the act of said partnership, the foregoing instrument was signed in the name of the corporation by its \_\_\_\_\_ President, sealed with its corporate seal and attested by him/her as its \_\_\_\_\_ Secretary.

WITNESS my hand and notarial seal or stamp, this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
[Notarial Seal/Stamp]

TENANT  
ACKNOWLEDGMENT FOR LIMITED LIABILITY COMPANY  
WITH CORPORATE MANAGER

STATE OF )  
COUNTY OF )

I, \_\_\_\_\_, a Notary Public in and for said County and State, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that (s)he is the \_\_\_\_\_ Secretary of \_\_\_\_\_ a \_\_\_\_\_ corporation, as Manager of \_\_\_\_\_ a \_\_\_\_\_ Limited Liability Company, and that by authority duly given and as the act of the corporation in its capacity as a Manager of said LLC, the foregoing instrument was signed in its name by its \_\_\_\_\_ President, sealed with its corporate seal and attested by him/her as its \_\_\_\_\_ Secretary.

WITNESS my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
[Notarial Seal/Stamp]

TENANT  
ACKNOWLEDGMENT FOR LIMITED LIABILITY COMPANY  
WITH INDIVIDUAL MANAGER

STATE OF )  
COUNTY OF )

I, \_\_\_\_\_, a Notary Public in and for said county and state, do hereby certify that \_\_\_\_\_, Manager of \_\_\_\_\_, a \_\_\_\_\_ Professional Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of said limited liability company.

WITNESS my hand and notarial seal or stamp, this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
[Notarial Seal]



STATE OF Illinois

COUNTY OF Cook

)  
) SS.  
)

I, Carmel L. Andres, a notary public in and for said County, in the State  
aforesaid, DO HEREBY CERTIFY THAT Thomas Schroeder, personally  
known to me to be the Vice President of WELLS FARGO BANK, NATIONAL  
ASSOCIATION, 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 he/she signed and delivered the said instrument pursuant to proper authority given by the  
Board of Directors of said corporation, as his/her free and voluntary act, and as the free and  
voluntary act and deed of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 9th day of October, 1997.

Carmel L. Andres

Notary Public  
[Seal]

My commission expires:

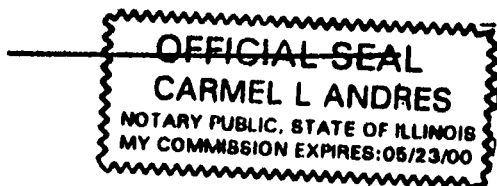


EXHIBIT A

Leasehold and fee interests  
underlying the shopping center known as  
Southlake Mall, located in Merrillville, Indiana

[May be replaced by metes and boundaries legal description]