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1998/0167 38 001 Page 1 of 9

2001-04-23 16:00:13

Cook County Recorder 71.50

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

*April* THIS AGREEMENT, made and entered into as of the *13<sup>th</sup>* day of \_\_\_\_\_, 2001, by and between KMART CORPORATION, a Michigan Corporation, ("Tenant"), whose address is 3100 West Big Beaver Road, Troy, Michigan 48084, and PRUDENTIAL MORTGAGE CAPITAL COMPANY, LLC ("Lender"), whose address is 100 Mulberry Street, 9<sup>th</sup> Floor, Gateway 4, Newark, New Jersey 07102.

A. Lender has agreed to make a mortgage loan (the "loan") to KRC Pulaski 841, Inc. (the "Borrower") to be secured by a mortgage or deed of trust (the "Deed of Trust") on the real property legally described in Exhibit "A" attached hereto (the "Premises"); and

B. Tenant is the present lessee under a lease dated July 17, 1998, made by KRC Pulaski 841, Inc., as Landlord, demising a portion of the Premises and other property (said lease and all amendments thereto being referred to as the "Lease"); and

C. The loan terms require that Tenant subordinate the Lease and its interest in the Premises in all respects to the lien of the Deed of Trust and that Tenant attorn to Lender; and

D. In return, Lender is agreeable to not disturbing Tenant's possession of the portion of the Premises covered by the Lease (the "Demised Premises"), so long as Tenant is not in default under the Lease;

NOW, THEREFORE, the parties hereby agree as follows:

1. Subordination. The Lease, and the rights of Tenant in, to and under the Lease and the Demised Premises, are hereby subjected and subordinated to the lien of the Deed of Trust.

2. Tenant Not To Be Disturbed. So long as Tenant is not in default (beyond any period given Tenant by the terms of the Lease to cure such default) in the payment of rent or additional rent or of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, (a) Tenant's possession of the Demised Premises, and its rights and privileges under the Lease, including but not limited to any extension or renewal rights, shall not be diminished or interfered with by Lender, and (b) Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Deed of Trust unless such joinder is necessary to foreclose the Deed of Trust and then only for such purpose and not for the purpose of terminating the Lease. If Lender joins Tenant in any judicial foreclosure proceeding, Lender shall reimburse Tenant for any and all reasonable legal expenses incurred by Tenant in defending the same.

3. Tenant To Attorn To Lender. If Lender shall become the owner of the Premises or the Premises shall be sold by reason of foreclosure or other proceedings

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brought to enforce the Deed of Trust or the Premises shall be transferred by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct Lease between the then owner of the Premises, who shall succeed to the rights and duties of the Landlord, and Tenant. Tenant shall attorn to Lender or any such other owner as its Landlord, said attornment to be effective and self-operative without the execution of any further instruments. Tenant shall be under no obligation to pay rent to Lender or any such other owner until Tenant receives written notice and a certified copy of an executed transferring document or certified court order from Lender or any such other owner that it has succeeded to Borrower's interest under the Lease. The notice shall be provided to Tenant at least 30 days prior to Tenant having any obligation to pay rent to the Lender or any other owner that has succeeded to Borrower's interest under the Lease.

No person or entity acquiring the interest of Landlord under the Lease as a result of any foreclosure proceeding or exercise of power of sale shall be:

- (a) bound by any base rent, percentage rent or other payment for more than the current month;
- (b) bound by any future amendment or modification of the Lease made without Lender's prior written consent; or
- (c) liable for any act or omission of any prior Landlord (including Borrower), unless Lender received notice of default and had an opportunity to cure the same pursuant to Section 5.

4. Purchase Options. Any option or rights contained in the Lease, or otherwise existing, to acquire any or all of the Premises are hereby made subject and subordinate to the rights of Lender under the Deed of Trust and acquisition of any or all of the Premises made by Tenant during the term of the Deed of Trust shall be made subordinate and subject to the Deed of Trust.

5. Lender's Option to Cure Borrower's Default. Tenant agrees that Borrower shall not be in default under the Lease unless written notice specifying such default is given to Lender. Tenant agrees that Lender shall have the right to cure such default on behalf of Borrower within 30 days after the receipt of such notice. Tenant further agrees not to invoke any of its remedies under the Lease (except the Lease emergency repair clause) until said 30 days have elapsed.

6. Notice of Discharge. Borrower or Lender shall give notice to Tenant of the reconveyance or other release of the Deed of Trust within 30 days of the date the reconveyance or other release is recorded.

7. Limitation. This Agreement shall not apply to any equipment owned or leased by Tenant which is now or hereafter placed or installed on the Demised Premises, and Tenant shall have the full right to remove said equipment at the expiration of the Lease term.

8. Successors and Assigns. This Agreement and each and every

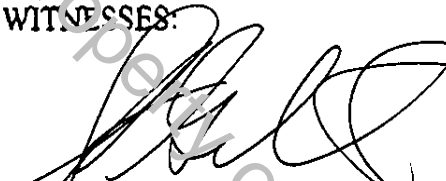

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covenant, agreement and other provision hereof shall be binding upon and shall inure to the benefit of the parties hereto and their representatives, successors and assigns.

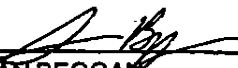
9. Federally Insured Lenders. If Lender is a federally insured depository institution, Lender certifies to Tenant that this Agreement has been approved by the board of directors or the loan committee of Lender, which approval is reflected in the minutes of said board or committee, and further undertakes to continuously maintain the Agreement as part of Lender's official records.

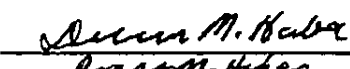

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed as of the date first above written.

WITNESSES:

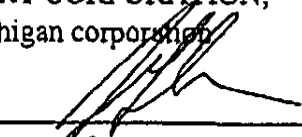
  
 STEVEN M. COLON  
  
 Judy L. Rudge

LENDER:  
PRUDENTIAL MORTGAGE  
CAPITAL COMPANY, LLC

By:   
SEAN BEGGAN  
Its: PRINCIPAL

  
 Dawn M. Huber  
  
 Deborah S. Houbt

TENANT:  
KMART CORPORATION,  
a Michigan corporation

By:   
John D. Gaber  
Its: Real Estate Attorney and  
Assistant Secretary

A:SUB.9357

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## ACKNOWLEDGEMENTS

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STATE OF New Jersey )  
 ) SS  
COUNTY OF Essex )

On this 11 day of April, 2001, before me personally appeared Sean Began, to me known to be the Principle of Prudential Mortgage Capital Co., the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed (if any) is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this day and year first above written.

SYLVIA KEARNEY  
Notary Public of New Jersey  
No. 2229974  
Commission Expires Sept. 25, 2004

Sylvia Kearney  
Notary Public  
County of Essex  
My commission expires: 9/25/2004

STATE OF MICHIGAN )  
 ) SS  
COUNTY OF OAKLAND)

On this 7th day of March, 2001, before me personally appeared John D. Gaber to me known to be the Real Estate Attorney and Assistant Secretary of KMART CORPORATION, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed (if any) is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this day and year first above written.

Zina Kiriakos  
Notary Public  
County of Oakland  
My commission expires: Dec. 18, 2001  
ZINA KIRIAKOS  
Notary Public, Oakland County, MI  
My Commission Expires Dec. 18, 2001

covenant, agreement and other provision hereof shall be binding upon and shall inure to the benefit of the parties hereto and their representatives, successors and assigns.

9. Federally Insured Lenders. If Lender is a federally insured depository institution, Lender certifies to Tenant that this Agreement has been approved by the board of directors or the loan committee of Lender, which approval is reflected in the minutes of said board or committee, and further undertakes to continuously maintain the Agreement as part of Lender's official records.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed as of the date first above written.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

LENDER:  
PRUDENTIAL MORTGAGE  
CAPITAL COMPANY, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

TENANT:  
KMART CORPORATION,  
a Michigan corporation

Debra M. Huber  
Debra M. Huber  
Deborah S. Houbt  
Deborah S. Houbt

By: \_\_\_\_\_

John D. Gaber

Its: Real Estate Attorney and

Assistant Secretary

A:SUB.9357

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## ACKNOWLEDGEMENTS

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2001, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of \_\_\_\_\_, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed (if any) is the corporate seal of said corporation.

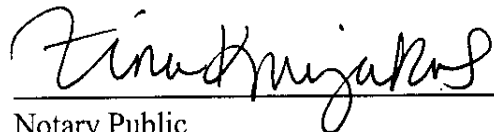
IN WITNESS WHEREOF I have hereunto set my hand and official seal this day and year first above written.

\_\_\_\_\_  
Notary Public  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF MICHIGAN )  
 )SS  
COUNTY OF OAKLAND)

On this 7<sup>th</sup> day of March, 2001, before me personally appeared John D. Gaber to me known to be the Real Estate Attorney and Assistant Secretary of KMART CORPORATION, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed (if any) is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this day and year first above written.

  
\_\_\_\_\_

Notary Public  
County of Oakland  
My commission expires: \_\_\_\_\_  
**ZINA KIRYAKOS**  
Notary Public, Oakland County, MI  
My Commission Expires Dec. 13, 2001

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Prepared by and when Recorded return to:

John D. Gaber, Esq.

Kmart Corporation

3100 West Big Beaver Road

Troy, Michigan 48084-3163

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LAWYERS TITLE INSURANCE CORPORATION

10330613

SCHEDULE A CONTINUED - CASE NO. 01-01910

## LEGAL DESCRIPTION:

THAT PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED ON THE WEST BY THE EAST RIGHT OF WAY LINE OF PULASKI ROAD; ON THE NORTH BY THE CENTER LINE OF 44TH STREET; ON THE EAST BY THE CENTER LINE OF SPRINGFIELD AVENUE; ON THE SOUTH BY THE CENTER LINE OF 45TH STREET, IN COOK COUNTY, ILLINOIS.

## ALSO KNOWN AS:

THAT PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE CENTER LINE OF 44TH STREET BEING ON THE EAST RIGHT-OF-WAY LINE OF PULASKI ROAD; THENCE SOUTH 89 DEGREES 21 MINUTES 17 SECONDS EAST ALONG SAID CENTER LINE OF 44TH STREET A DISTANCE OF 617.59 FEET TO A POINT, THENCE SOUTH 00 DEGREES 01 MINUTES 14 SECONDS EAST ALONG THE CENTER LINE OF SPRINGFIELD AVENUE A DISTANCE OF 667.81 FEET TO A POINT; THENCE NORTH 89 DEGREES 19 MINUTES 46 SECONDS WEST ALONG THE CENTER LINE OF 45TH STREET A DISTANCE OF 617.83 FEET TO A POINT, THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID EAST RIGHT OF WAY LINE OF PULASKI ROAD A DISTANCE OF 667.54 FEET TO THE POINT OF BEGINNING, (THE REFERENCE HEREIN TO STREETS BEING THOSE PLATTED BY GILLETT'S SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED AS DOCUMENT NUMBER 62776), IN COOK COUNTY, ILLINOIS.

## THE ABOVE ALSO DESCRIBED AS:

## NEW MEASURED LEGAL DESCRIPTION:

LOT 3, JAMES GILLETT'S SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, CITY OF CHICAGO, COOK COUNTY, ILLINOIS TOGETHER WITH THE SOUTH HALF OF 44TH STREET, THE WEST HALF OF SPRINGFIELD AVENUE, AND THE NORTH HALF OF 45TH STREET, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER LINE OF 44TH STREET AND THE EAST RIGHT OF WAY LINE OF PULASKI AVENUE; THENCE SOUTH 89 DEGREES 21 MINUTES 17 SECONDS EAST, 617.59 FEET; THENCE SOUTH 00 DEGREES 01 MINUTES 13 SECONDS EAST, 667.82 FEET; THENCE NORTH 89 DEGREES 19 MINUTES 46 SECONDS WEST, 617.83 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 667.54

(Continued)

SCHEDULE A - PAGE 2

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LAWYERS TITLE INSURANCE CORPORATION

10330613

SCHEDULE A  
LEGAL DESCRIPTION CONTINUED

FEET TO THE POINT OF BEGINNING. SUBJECT TO AN EASEMENT FOR PUBLIC ROAD PURPOSES OVER THE NORTHERLY, EASTERLY AND SOUTHERLY 33.00 FEET OF THE PREMISES DESCRIBED HEREIN.

19-02-302-008

4433 S. Pulaski  
Chicago, IL

Prepared by and  
Return to:

Winston & Strawn  
200 Park Ave.

New York, NY 10166

Attn: Nadgia James