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Eugene "Gene" Moore Fee: \$34.00  
Cook County Recorder of Deeds  
Date: 08/08/2003 03:24 PM Pg: 1 of 6

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

*NO 1031195-8X*  
THIS AGREEMENT made as of this 24<sup>th</sup> day of July, 2003, by and between THE PRIVATEBANK AND TRUST COMPANY ("Lender") and KOHL'S DEPARTMENT STORES, INC., a Delaware corporation ("Subtenant").

### RECITALS:

A. Subtenant has entered into a certain Sublease (the "Sublease") dated February 17, 2003, for certain premises located in the City of Chicago, Cook County, Illinois, and legally described in Exhibit A attached hereto and made a part hereof (the "Premises").

B. Lender is the beneficiary under a Mortgage, Assignment of Leases and Rents and Security Agreement (the "Security Instrument"), between Fiston Development L.L.C., a Delaware limited liability company ("Sublandlord") and Lender, dated August 28, 2000 and recorded with the Cook County, Illinois Recorder on September 1, 2000 as Document No. 00682529, as modified by (i) Modification of Mortgage Note Line of Credit Agreement Mortgage and other Security Documents dated September 18, 2000 and recorded with the Cook County, Illinois Recorder on September 19, 2000 as Document No. 00726575; (ii) Modification of Mortgage Note Line of Credit Agreement, Mortgage and Other Security Documents dated September 15, 2000 and recorded with the Cook County, Illinois Recorder on September 19, 2000 as Document No. 00729197; and (iii) Modification of Mortgage Note Line of Credit Agreement, Mortgage and Other Security Documents dated October 2, 2000 and recorded with the Cook County, Illinois Recorder on October 12, 2000 as Document No. 00796729, encumbering the Premises. The Security Instrument secures a loan or loans from Lender to Sublandlord.

C. Each party hereto has requested the other party to enter into this Agreement.

**Near North National Title Corp  
222 North LaSalle Street  
Chicago, Illinois 60601**

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## AGREEMENTS:

**NOW, THEREFORE**, in consideration of the above Recitals and the agreements of the parties set forth below, and for One Dollar (\$1.00) and other good and valuable consideration, the parties hereto agree as follows:

1. The Sublease and each and every term and condition thereof, and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of subtenant in and to the Premises are and shall be subject and subordinate to the Security Instrument and to all of the terms and conditions contained therein, all advances made or to be made thereunder, and to any renewals, modifications, supplements, replacements, consolidations, increases and extensions thereof.

2. Lender agrees that in the event of foreclosure of the Security Instrument, or other enforcement of the terms and conditions of the Security Instrument or the exercise by Lender of its rights under the Assignment, or if Lender comes into possession or acquires title to the Premises as a result of foreclosure or the threat thereof, or as a result of any other means, such action shall not result in either a termination of the Sublease or a diminution or impairment of any of the rights granted to Subtenant in the Sublease or in an increase in any of Subtenant's obligations under the Sublease, including but not limited to provisions in the Sublease dealing with condemnation, fire and other casualties.

3. Subtenant agrees with Lender that if the interest of Sublandlord in the Premises shall be transferred to Lender by reason of foreclosure or other proceedings, or by any other manner, or in the event of a foreclosure sale of the Premises to any other person, firm, or corporation, then in any of said events, Subtenant shall be bound to Lender or such purchaser, grantee or other successor to Sublandlord's interest ("Successor Landlord") under all of the terms, covenants and conditions of the Sublease for the balance of the term remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Sublease, with the same force and effect as if the Successor Landlord were the sublandlord under the Sublease. Subtenant does hereby agree to attorn to the Successor Landlord.

4. At such time that Successor Landlord succeeds to the interest of Sublandlord under the Sublease, Successor Landlord shall be bound to Subtenant under all of the terms, covenants and conditions of the Sublease for the balance of the term remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Sublease; provided, however, Subtenant agrees that a Successor Landlord shall not be:

- (a) liable for any act or omission of any prior sublandlord under the Sublease (including Sublandlord), other than continuing non-monetary defaults of which Lender has notice;
- (b) bound by any base rent or additional rent which Subtenant may have paid for more than the current or next succeeding month to any prior sublandlord;

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- (c) obligated to perform any work in the Premises or any part thereof, other than such work which is required to be performed by Sublandlord under the Sublease;
- (d) bound by any amendment or modification of the Sublease made by any prior sublandlord (including Sublandlord) without Lender's consent; or
- (e) subject to or liable for any charges, liens, defenses or offsets that Subtenant might be entitled to assert against any prior sublandlord under the Sublease (including Sublandlord); provided, however, the foregoing shall not preclude Subtenant from enforcing any rights under the Sublease.

5. Subtenant will notify Lender of any default of Sublandlord under the Sublease which Subtenant believes would entitle it to cancel the Sublease or abate the base rent or additional rent payable thereunder, and agrees that no notice of cancellation thereof nor any such rent abatement shall be effective against Lender unless Lender has received the notice aforesaid and has failed to cure the default within the longer of thirty (30) days after such notice or such period of time following such notice as Sublandlord has to cure the default which gives rise to such alleged right of cancellation or abatement ("Lender Cure Period"). All such notices shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows:

If to Lender:                                    The Privatebank and Trust Company  
Ten North Dearborn Street  
Chicago Illinois 60602  
Attention: Ms. Jane Frid

If to Subtenant:                                    Kohl's Department Store, Inc.  
N 56W 17000 Ridgewood Drive  
Menomonee Falls, Wisconsin 53051  
Attention: Law Department

6. Provided Sublandlord has irrevocably and unconditionally directed Subtenant to comply with such demand, Subtenant shall, upon Lender's demand therefor, thereafter pay directly to Lender all amounts thereafter payable by Subtenant to Sublandlord under the Sublease.

7. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein, the term "Subtenant" shall include Subtenant, its successors and assigns as permitted under the Sublease; the words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Sublandlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure, and the word "Lender" shall include the Lender specifically named herein and any of its successors and assigns, including any Successor Sublandlord.

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

**LENDER:**

**THE PRIVATE BANK AND TRUST COMPANY**

By: Jane Frid  
Name: JANE FRID  
Title: ASST. MANAGING DIRECTOR

**SUBTENANT:**

**KOHL'S DEPARTMENT STORES, INC., a Delaware corporation**

By: Patrick E. Peery  
Name: Patrick E. Peery  
Title: Senior Vice President-Real Estate

Property of Cook County Clerk's Office

APPROVED  
AJS

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STATE OF Illinois )  
 ) SS:  
CITY/COUNTY OF COOK )

I HEREBY CERTIFY that on this 24 day of July, 2003, before me, the undersigned officer, personally appeared Jane Frid, who acknowledged himself/herself to be the Assoc. Managing Director of The Privatebank and Trust Company, and that (s)he, in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of The Privatebank and Trust Company, as Assoc. Managing Director of The Privatebank and Trust Company.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.



Alicia Torres  
Notary Public

My Commission expires:

STATE OF WISCONSIN )  
 ) SS:  
COUNTY OF WAUKESHA )

I HEREBY CERTIFY that on this 29 day of July, 2003, before me, the undersigned officer, personally appeared Patrick E. Peery, who acknowledged himself/herself to be the Sr. VP-Real Estate of Kohl's Department Stores, Inc., a Delaware corporation, and that (s)he, in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of Kohl's Department Stores, Inc., a Delaware corporation, as Sr. VP-Real Estate of Kohl's Department Stores, Inc., a Delaware corporation.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

Herb J. G.  
Notary Public

My Commission expires: July 11, 2004

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

Alan J. Salle  
Kohl's Department Stores, Inc.  
N56 WI 7000 Ridgewood Drive  
Menomonee Falls, Wisconsin 53051

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## EXHIBIT A

### PREMISES

#### PARCEL 7:

Lots 1 to 4, and Lot 20, and all that part of the vacated alley lying Southwesterly of and adjoining the Southwesterly line of Lot 1, lying East of and adjoining the East line of Lot 20, and lying South of a line extended from the Westernmost corner of Lot 1 to the Northeast corner of Lot 20, all in Partridge's Subdivision of Lot 12 in Block 21 in Sheffield's Addition to Chicago in Section 31, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

#### PARCEL 8:

Lot "A" in the Consolidation of parts of Original Block 21 in Sheffield's Addition to Chicago in the East ½ of the Northeast ¼ of Section 31, Township 40 North, Range 14 East of the Third Principal Meridian, according to the plat thereof recorded September 6, 1911 as Document Number 4824513, in Cook County, Illinois; EXCEPT therefrom the following described portion thereof conveyed by Deed dated December 3, 1986 recorded December 31, 1986 as Document Number 86631255 described as follows:

That part of Lot "A" in the Consolidation of parts of Original Block 21 in Sheffield's Addition to Chicago in the East ½ of the Northeast ¼ of Section 31, Township 40 North, Range 14 East of the Third Principal Meridian, lying Easterly of the following described lines: Commencing at the intersection of the Northwesterly line of North Hobson Avenue with the Southwesterly line of North Elston Avenue; thence North 45 degrees 45 minutes 02 seconds West along said Southwesterly line 100.27 feet to the point of beginning; thence South 44 degrees 17 minutes 58 seconds West 146.52 feet; thence South 43 degrees 27 minutes 42 seconds West 167.81 feet, in Cook County, Illinois.

#### PARCEL 16:

Lot 19 in Partridge's Subdivision of Lot 12 in Block 21 in Sheffield's Addition to Chicago in Section 31, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Index Numbers:

14-31-211-016  
 14-31-211-017  
 14-31-211-018  
 14-31-211-024  
 14-31-211-027  
 14-31-211-009