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Cook County Recorder of Deeds
Date: 11/28/2005 03:56 PM Pg: 1 of 9



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**SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENMENT AGREEMENT**

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1ST AMERICAN TITLE ORDER #

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UNOFFICIAL COPY**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

* Prudential Multifamily Mortgage, Inc., a Delaware Corp.

** 2200 Ross Ave., Suite 4900E, Dallas, TX 75201

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") dated the 2 day of November, 2005 between * 1343 S Dearborn II, LLC whose address is ** 343 S Dearborn St, Chicago IL 60607 ("Lender"), and 7-Eleven, Inc. ("Tenant"), whose address is 2711 N Haskell Ave., Dallas TX 75204

2711 N Haskell Ave., Dallas TX 75204

RECITALS:

A. Tenant has entered into a Lease Agreement dated September 29, 27 July, 2000 (the "Lease") with 343 S Dearborn II, LLC ("Landlord"), covering certain premises more fully described in the Lease (the "Premises"), which Premises are a part of that the real property located in 343 S Dearborn St. #100, Chicago IL 60604 (the "Property");

B. Lender has made a loan to Landlord in the sum of \$ 3,500,000.00 secured by a Multifamily [Deed of Trust] [Mortgage] [Deed to Secure Debt], Assignment of Rents and Security Agreement on the Landlord's interest in the Property (the "Security Instrument"), recorded in the official records of Cook County (the "Public Records"); and

C. Tenant has agreed to the subordination of the Lease to the Security Instrument lien of the the condition that it is assured of continued occupancy of the Premises under the terms of the Lease and this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, promise, covenant and agree as follows:

1. The Lease and all estates, rights, options, liens and charges therein contained or created under the Lease are and shall be subject and subordinate to the lien and effect of the Security Instrument insofar as it affects the real and personal property or which the Premises form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interest thereon.

2. In the event Lender or any trustee for Lender takes possession of the Property, as mortgagee-in-possession or otherwise, or forecloses the Security Instrument or otherwise causes the Property to be sold pursuant to the Security Instrument, Lender agrees not to affect, terminate

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or disturb Tenant's right to quiet enjoyment and possession of the Premises under the terms of the Lease or any of Tenant's other rights under the Lease in the exercise of Lender's rights under the Security Instrument so long as Tenant is not then in default under any of the terms, covenants or conditions of the Lease or this Agreement.

3. In the event that Lender succeeds to the interest of the Landlord under the Lease and/or Landlord's fee title to the Property, or if anyone else acquires title to or the right to possession of the Property upon the foreclosure of the Security Instrument or by other sale pursuant to the Security Instrument, or upon the sale of the Property by Lender or its successors or assigns or any trustee for Lender after foreclosure or other sale pursuant to the Security Instrument or acquisition of title in lieu thereof or otherwise, Lender or its successors or assigns or the then owner of Landlord's fee title to the Property after foreclosure or other sale pursuant to the Security Instrument (hereinafter collectively referred to in this paragraph as "Successor Landlord") and Tenant hereby agree to recognize one another as landlord and tenant, respectively, under the Lease and to be bound to one another under all of the terms, covenants and conditions of the Lease, and Successor Landlord shall assume all of the obligations of the Landlord under the Lease. Accordingly, from and after such event, Successor Landlord and Tenant shall have the same remedies against each other for the breach of an agreement contained in the Lease as Tenant and Landlord had before Successor Landlord succeeded to the interest of the Landlord; provided, however, that Successor Landlord shall not be:

- (a) liable for any act or omission of any prior landlord (including Landlord);
- or
- (b) subject to any offsets or defenses that Tenant might have against any prior landlord (including Landlord); or
- (c) bound by any rent or additional rent that Tenant might have paid for more than one month in advance to any prior landlord (including Landlord); or
- (d) bound by any amendment or modification of the Lease made after the date of this Agreement without Lender's prior written consent; or
- (e) liable for return of any security deposit.

4. Although the foregoing provisions of this Agreement shall be self-operative, Tenant agrees to execute and deliver to Lender or to any person to whom Tenant herein agrees to attorn, such other instrument or instruments as Lender or such other person shall from time to time request in order to confirm such provision.

5. Tenant hereby ~~warrants and~~ represents, covenants and agrees to and with Lender:

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(a) not to alter or modify the Lease in any respect without prior written consent of Lender; which consent shall be the responsibility of Landlord to obtain and Tenant shall not be held liable nor Tenant's rights diminished there under for Landlord's failure to obtain such consent;

(b) to deliver to Lender at the address indicated above a duplicate of each notice of default delivered to Landlord at the same time as such notice is given to Landlord;

(c) that Tenant is now the sole owner of the leasehold estate created by the Lease and shall not hereafter transfer the Lease except as permitted by the terms thereof;

(d) not to seek to terminate the Lease by reason of any default of Landlord without prior written notice thereof to Lender and the lapse thereafter of such time as under the Lease was offered to Landlord in which to remedy the default, and the lapse of 30 days after the expiration of such time as Landlord was permitted to cure such default; provided, however, that with respect to any default of Landlord under the Lease which cannot be remedied within such time, if Lender commences to cure such default within such time and thereafter diligently proceeds with such efforts and pursues the same to completion, Lender shall have such time as is reasonably necessary to complete curing such default. Notwithstanding the foregoing, in the event either Lender or Landlord do not cure or commence curing such default within the time provided to Landlord under the Lease and the nature of the default threatens Tenant's ability to conduct its daily business or threatens to materially or adversely damage tenant's property located on the Leased Premises, Tenant shall be permitted to exercise its right under the Lease;

(e) not to pay any rent or other sums due or to become due under the Lease more than 30 days in advance of the date on which the same are due or to become due under the Lease;

(f) to certify promptly in writing to Lender in connection with any proposed assignment of the Security Instrument, whether or not any default on the part of Landlord then exists under the Lease; and

(g) upon receipt from Lender of notice of any default by Landlord under the Security Instrument, to pay to Lender directly all rent and other sums due under the Lease.

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

7. This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Property is located.

8. If, the Security Instrument is a deed of trust, then, this Agreement is entered into by one or more trustees of Lender in his or her capacity as Trustee and not individually. Tenant agrees that:

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(a) neither the trustees, nor the officers, employees, agents or shareholders of the Lender shall be personally liable hereunder; and

(b) Tenant and all others shall look solely to the interest of the Lender in the Property for the payment of any claim hereunder or for the performance of any obligation, agreement, contribution or term to be performed or observed by it hereunder or under the Security Instrument of any other agreement or document securing or collateral to the Security Instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the date and year first above written.

TENANT: 7-Eleven, Inc.

By: *Marijan Smith*

Name: Marijan Smith

Title: Assistant Secretary

LENDER:

Prodentia Multifamily Mortgage, Inc.

By: _____

Name: _____

Title: _____

By execution hereof, Landlord acknowledges and consents to the provisions of this Agreement

LANDLORD:

343 South Dearborn II, LLC

By: _____

Name: *Jonathan Heltzman*

Title: *Managing Member*

Subordination, Non-Disturbance and Attornment Agreement – Fannie Mae

Form 4510 4/98 (Page 4)

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(a) neither the trustees, nor the officers, employees, agents or shareholders of the Lender shall be personally liable hereunder; and

(b) Tenant and all others shall look solely to the interest of the Lender in the Property for the payment of any claim hereunder or for the performance of any obligation, agreement, contribution or term to be performed or observed by it hereunder or under the Security Instrument of any other agreement or document securing or collateral to the Security Instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the date and year first above written.

TENANT: 7-Eleven, Inc.

By: *Marijan Smith*

Name: Marijan Smith

Title: Assistant Secretary

LENDER: *See signature pg attached*

Prodenial Multifamily, Mortgage, Inc.

By: _____

Name: _____

Title: _____

By execution hereof, Landlord acknowledges and consents to the provisions of this Agreement

LANDLORD:

343 South Dearborn II, LLC

By: _____

Name: _____

Title: _____

Subordination, Non-Disturbance and Attornment Agreement -- Fannie Mae

Form 4510 4/98 (Page 4)

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STATE OF TEXAS)

) SS.

COUNTY OF DALLAS)

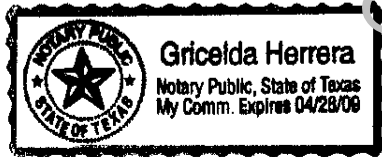
On this, the 16th day of November, 2005, before me, the Subscriber, a Notary Public in and for the State and County aforesaid personally appeared Marijan Smith, who acknowledged to be the Assistant Secretary of 7-Eleven, Inc., and that as such Assistant Secretary, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the aforesaid corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Gricelda Herrera
Notary Public (sign)

Gricelda Herrera
Notary Public (print)

My commission expires: April 29, 2009



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EXHIBIT A

LOTS 18, 19 AND 24 (EXCEPT THAT PART OF SAID LOTS TAKEN FOR DEARBORN STREET) IN GEORGE W. SNOW'S SUBDIVISION OF BLOCK 139 IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN # 1716234005
1716234006

Address: 343 S Dearborn
Chicago, IL

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