

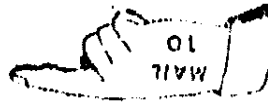
94875744

RECORDING REQUESTED BY:

The Prudential Insurance Company of America

AND WHEN RECORDED MAIL TO:

**PREPARED BY:
David A. Lapins, Esq.
Sommerstein Nath & Rosenthal
5000 Sears Tower
Chicago, Illinois 60606**



DEPT-01 RECORDING \$49.50
T#0011 TRAN 4110 10/12/94 14:33:00
#8157 & RV *-94-875744
COOK COUNTY RECORDER

PRUDENTIAL LOAN NO. 8 100 569

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SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

This Subordination, Attornment and Non-Disturbance Agreement (the "Agreement") is made and entered into as of the 15th day of October, 1994, by and among Marshalls of Broadview, L.L.C., an Illinois corporation ("Tenant"), American National Bank & Trust Company of Chicago, as Trustee under Trust Agreement dated December 1, 1991, and known as Trust No. 111954-08 (hereafter referred to as either "Landlord", or "Borrower") and The Prudential Insurance Company of America, a New Jersey corporation (hereafter referred to as "Lender").

WHEREAS, Lender has made a loan (the "Loan") to Borrower evidenced by a note (the "Note") secured by a mortgage (the "Mortgage"), dated September 24, 1994 and recorded among the records of the office of the Cook County, Illinois Recorder of Deeds constituting a first lien upon the land described in Exhibit "A" attached hereto and made a part hereof and the improvements thereon, as well as all of Landlord's right, title interest, estate and claim now owned or hereafter acquired in, to or relating to the items described in (i) through (ix) in the recitals of the Mortgage (collectively, the "Property") and

WHEREAS, Landlord and Tenant have entered into a certain lease dated July 27, 1993, which lease provides for the direct payment of rents from Tenant to Landlord for the use and occupancy of the Marshalls store building located at Broadview Village Square, Broadview, Illinois (the "Premises") by Tenant, as more fully set forth in the lease (hereafter, the lease and all present and future amendments and modifications thereto, and extensions thereof, shall be referred to collectively as the "Lease"); and

WHEREAS, Lender wishes to obtain from Tenant certain assurances that Tenant will attorn to the purchaser at a foreclosure sale in the event of a foreclosure or to the holder of the Note and Mortgage in the event of such holder's exercise of its rights under the Note and Mortgage; and

WHEREAS, Tenant wishes to obtain from Lender certain assurances that so long as Tenant is not in default of Tenant's obligations to Landlord under the Lease, that

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Cook Co, Ill.

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effect subject to the terms, covenants, conditions, provisions and agreements thereof (including, without limitation, the application of insurance proceeds and eminent domain awards as provided in the Lease), and Lender further agrees that the Lease shall not be terminated except in accordance with the terms of the Lease. In the event Tenant is in default under the Lease beyond all available cure periods, Lender shall have all of the rights of Landlord set forth in the Lease.

Immediately upon the acquisition by Lender of possession or title to the Property by reason of foreclosure or enforcement of the Mortgage or the Note, or by a conveyance in lieu thereof, or as a result of any other means, Tenant agrees to be bound to Lender under all of the terms, covenants, and conditions of the Lease for the balance of the term thereof, including any extensions thereof permitted to Tenant, with the same force and effect as if Lender were the landlord under the Lease, and Tenant does hereby attorn to Lender as its landlord, said attornment to be effective and self-operative upon receipt by Tenant of notice from Lender or Landlord of the acquisition of Landlord's interest in the Lease by Lender without the execution of any other instruments on the part of either party hereto.

Lender further agrees that if it obtains possession or title to the Property by, through or under foreclosure or other enforcement of the Mortgage, or as a result of any other means, then, provided that Tenant is not in default under the Lease beyond any notice and cure period provided in the Lease, Lender shall accept the attornment of Tenant and agrees that it will not join or name Tenant as a party in any proceedings to foreclose the Mortgage and that it shall assume and perform all of Landlord's obligations under the Lease and shall be bound to Tenant under all of the terms, covenants, and conditions of the Lease and Tenant shall, from and after the occurrence of the events set forth above, have the same remedies against Lender that Tenant has under the Lease against Landlord; provided, however, that Lender shall not be:

- a. liable to Tenant for damages for any act or omissions of Landlord or any prior landlord occurring prior to Lender obtaining possession or title to the Property, except to the extent that such damages continue after Lender obtains possession or title to the Property; or
- b. subject to any offsets, claims or defenses which Tenant might have against Landlord or against any prior landlord which arise prior to the date Lender obtains possession or title to the Property, except to the extent that such offsets, claims or defenses arise in connection with a breach of the Lease continuing after Lender obtains possession or title to the Property; or
- c. bound by any rent or additional rent or deposit, rental security or any other sums which Tenant may have paid to Landlord or any other landlord unless such pre-payment is

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required pursuant to the terms of the Lease, or unless such sums have been transferred from Landlord to Lender; or

d. bound by any amendment or modification of the Lease which decreases the rent payable by Tenant under the Lease, which changes the term of the Lease, or which provides Tenant with a termination right not currently set forth in the Lease, made without Lender's prior written consent; or

e. bound to the Tenant subsequent to the date upon which the Lender transfers its interest in the Property to any third party; or

f. obligated or liable to Tenant with respect to the construction and completion of the initial improvements in the Premises for Tenant's use, enjoyment or occupancy, provided, however, that Lender shall be liable for repair of latent defects with respect to the initial improvements to the Premises; or

g. obligated or liable to Tenant for any moving, relocation or refurbishment allowance or any payment or allowance for improvements to the Premises or any part thereof except to the extent specifically set forth in the Lease; or

h. liable for the payment of any leasing commissions or other expenses for which Landlord or any prior landlord incurred the obligation to pay; or

i. bound or liable to Tenant under any oral or written notice given by Tenant to Landlord or any prior landlord.

j. bound under any provision of the Lease which may give rise to liabilities, duties or responsibilities of Lender for any matters relating to hazardous materials or the environment, except to the extent that such liabilities, duties or responsibilities are caused by acts or omissions of Lender or any prior landlord under the Lease.

8. Obligations of Succeeding Owner. Tenant hereby agrees that a JV entity or person which at any time hereafter succeeds to the interest of the Landlord under the Lease, including, without limitation, Lender, as a result of Lender's exercise of its rights under the Mortgage or as a result of any other means, or a purchaser from Lender, shall be liable only for the performance of the obligations of the Landlord under the Lease which arise and accrue during the period of such entity's or person's ownership or possession of the Property.

for and with respect to the period prior to the date Lender succeeds to the interest of Landlord under the Lease.

Property of [Watermark]

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7. Notices. All notices or other written communications required or permitted to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been properly given upon receipt when mailed via any reputable overnight courier service which provides a receipt or sent by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

If to Borrower:

American National Bank and Trust Company of Chicago
Trust No 114884-06
33 North LaSalle Street
Chicago, Illinois 60690
Attention: Land Trust Department

If to Tenant:

Marshalls of Broadview, IL, Inc.
200 Brickstone Square
Box 9030
Andover, Massachusetts 01810
Attention: Property Administration.

If to Lender:

The Prudential Insurance Company of America
130 East Randolph Street, Suite 1400
Chicago, Illinois 60601
Attention: Vice President

The Prudential Insurance Company of America
130 East Randolph Street, Suite 1300
Chicago, Illinois 60601
Attention: James L. Woolner, Jr., Esq.

or addressed as such party may from time to time designate in a writing to the other parties hereto and delivered in accordance with the provisions of this Section 7.

8. Miscellaneous. This Agreement may not be amended or modified in any manner other than by an agreement in writing, signed by the parties hereto or their respective successors in interest or assigns, and this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Landlord's estate in the Property by voluntary deed, assignment or other conveyance or transfer in lieu of foreclosure; and the word "Lender" shall include the Lender herein specifically named and any of its successors, participants and assigns, including anyone who shall have succeeded to Landlord's interest in the Property or acquired possession thereof by, through or under foreclosure of the Mortgage, by any other manner of enforcement of the Mortgage, or the Note or other obligation secured thereby, or by any other means.

9. Conflicts with Lease. In the event of any inconsistency between the terms of the Lease and the terms of this Agreement, the terms of this Agreement shall control.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed and sealed by their duly authorized representatives as of the date first above written.

ATTEST:

[Signature]
Notary Public

TENANT:

MARSHALLS OF BROADVIEW, IL, INC.

By: Howard D. Gorman (SEAL)
Title:

LANDLORD:

AMERICAN NATIONAL BANK & TRUST
COMPANY OF CHICAGO AS TRUSTEE AS
AFORESAID

By: [Signature] (SEAL)
Title: Branch

ATTEST:

[Signature]
Assistant Secretary

LENDER:

THE PRUDENTIAL INSURANCE COMPANY OF
AMERICA

By: [Signature] (SEAL)
Vice President

The undersigned is the Guarantor under the Lease Guarantee (the "Guaranty") dated August 2, 1993, executed and delivered by it to and for the benefit of Lender. The undersigned hereby consents to the foregoing Agreement and agrees to become and remain bound to Lender under the Guaranty, subject to and in accordance with the terms of the Guaranty, at any time that the Tenant becomes bound to the Lender under the Lease.

WITNESS:

GUARANTOR:

MELVILLE REALTY COMPANY, INC. a New
York corporation

By: _____ (SEAL)
Title:

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This instrument is executed by the undersigned Land Trustee, not personally but as such Trustee in the exercise of the power and authority vested in it as such Trustee. It is expressly understood and agreed that all of the recitations, representations, warranties, covenants, conditions, terms and conditions herein made on the part of the Trustee are intended to bind the Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforced against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed and sealed by their duly authorized representatives as of the date first above written.

ATTEST:

[Handwritten Signature]

WITNESS:

ATTEST:

Assistant Secretary

WITNESS:

Roseanne Mestromeris

TENANT:

MARSHALLS OF BROADVIEW, IL, INC.

By: *[Handwritten Signature]* (SEAL)
Title:

LANDLORD:

AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO AS TRUSTEE AS AFORESAID

By: _____ (SEAL)
Title:

LENDER:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

By: _____ (SEAL)
Vice President

The undersigned is the Guarantor under the Lease Guaranty (the "Guaranty") dated August 2, 1993, executed and delivered by it to and for the benefit of Landlord. The undersigned hereby consents to the foregoing Agreement and agrees to become and remain bound to Lender under the Guaranty, subject to and in accordance with the terms of the Guaranty, at any time that the Tenant becomes bound to the Lender under the Lease.

GUARANTOR:

MELVILLE REALTY COMPANY, INC., a New York corporation

By: *[Handwritten Signature]* (SEAL)
Vice President



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The undersigned is the Guarantor under the Lease Guarantee (the "Guaranty") dated July 27, 1993, executed and delivered by it to and for the benefit of Lender. The undersigned hereby consents to the foregoing Agreement and agrees to become and remain bound to Lender under the Guaranty, subject to and in accordance with the terms of the Guaranty, at any time that the Tenant becomes bound to the Lender under the Lease.

WITNESS:

GUARANTOR:

MARSHALLS, INC., a Mass. limited liability corporation



 (REAL)
Vice President

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Cook County of)
SS.
COUNTY OF COOK)

I, Mary Ann Mueller, a Notary Public in and for said County, in the State
aforesaid, DO HEREBY CERTIFY that the foregoing Instrument was acknowledged before
me this 5th day of October by Henric Jossan, Vice President of Marshalls of
Broadview, IL, Inc., an Illinois corporation, on behalf of said corporation.

GIVEN under my hand and Notarial Seal this 5th day of October, 1984.

Mary Ann Mueller
Notary Public

My Commission Expires:

MY COMMISSION EXPIRES NOV. 17, 2000

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STATE OF ILLINOIS)
COUNTY OF COOK) 89.

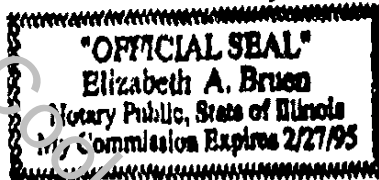
I, Elizabeth A. Bruen, Notary Public in and for said County, in the State
aforesaid, DO HEREBY CERTIFY that the foregoing instrument was acknowledged before
me this 11th day of October, 1984 by David Dreyfus, as a Vice President of The Prudential
Insurance Company of America, a New Jersey corporation, on behalf of said corporation.

GIVEN under my hand and Notarial Seal this 11th day of October, 1984.

Elizabeth A. Bruen
Notary Public

My Commission Expires

2/27/95



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Commonwealth of)
Massachusetts) SS.
COUNTY OF ESSEX)

I, Mary Ann Mueller, a Notary Public in and for said County, in the State
aforesaid, DO HEREBY CERTIFY that the foregoing instrument was acknowledged before
me this 5th day of October by Howard G. Cassin, Vice President of
Marskills, Inc., a Massachusetts corporation, on behalf of said
corporation.

GIVEN under my hand and Notarial Seal this 5th day of October, 1994.

Mary Ann Mueller
Notary Public

My Commission Expires:

My commission exp. Nov 17, 2001

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STATE OF New York)
COUNTY OF Westchester) SS.

I, Roseanne Mastromarino a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 7th day of October by Kenneth A. DellaRocca Vice President of Melville Realty Company, Inc., a New York corporation, on behalf of said corporation.

GIVEN under my hand and Notarial Seal this 7th day of October, 1994.

Roseanne Mastromarino
Notary Public

My Commission Expires _____

ROSEANNE MASTROMARINO
Notary Public, State of New York
No. 011145022558
Qualified in Westchester County
Commission Expires January 18, 1996

Property of County Clerk's Office

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EXHIBIT A

(Property Description)

The real property located in the City of Broadview, County of Cook, State of Illinois, and described as follows:

LOTS 2, 8, AND 9, (EXCEPT THAT PART OF LOT 9 DESCRIBED BY COMMENCING AT THE NORTHWEST CORNER OF LOT 7 OF SAID BROADVIEW VILLAGE SQUARE; THENCE SOUTH 00 DEGREES 05 MINUTES 44 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 7, 79.84 FEET FOR POINT OF BEGINNING; THENCE NORTH 89 DEGREES 54 MINUTES 16 SECONDS WEST 10.08 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 44 SECONDS WEST, 7.33 FEET; THENCE NORTH 89 DEGREES 54 MINUTES 16 SECONDS WEST, 115.00 FEET; THENCE SOUTH 45 DEGREES 05 MINUTES 44 SECONDS WEST, 36.36 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 44 SECONDS WEST, 117.50 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES 16 SECONDS EAST, 25.00 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 44 SECONDS WEST, 32.50 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES 16 SECONDS EAST, 125.08 FEET TO A POINT ON THE WEST LINE OF LOT 7 IN SAID BROADVIEW VILLAGE SQUARE; THENCE NORTH 00 DEGREES 05 MINUTES 44 SECONDS EAST, ALONG THE WEST LINE OF SAID LOT 7 IN BROADVIEW VILLAGE SQUARE, 167.67 FEET, TO THE POINT OF BEGINNING) AND LOTS 10, 11, AND 12 IN BROADVIEW VILLAGE SQUARE, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 8, 1994 AS DOCUMENT NUMBER 94212972.

PARCEL 2:

EASEMENT FOR INGRESS AND EGRESS FOR PEDESTRIAN AND VEHICULAR ACCESS AS SET FORTH IN THE OPERATION AND EASEMENT AGREEMENT DATED JULY 20, 1993 AND RECORDED SEPTEMBER 2, 1993 AS DOCUMENT NUMBER 93703155 OVER AND ACROSS LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 AND 12 IN BROADVIEW VILLAGE SQUARE AFORESAID.

Permanent Tax Index Numbers:

15-22-400-001
15-22-400-004
15-22-411-001