

go

94875744

#### RECORDING REQUESTED BY:

The Prutiential Insurance Company of America

#### <u>AND WHEN RECORDED MAIL TO:</u>

PREPORED 134: David A. Lapire, Seq. Somerechein Nath & Recenthel 8000 Segre Tower Chargo, Minois 60606



DEPT-01 RECORDING \$49.50
T00011 TRAN 4110 10/12/94 14:33:00
08157 \$ RV #-94-875744
COBK COUNTY RECORDER

PRUDENTIAL LOAN NO. 6 100 569

### 94875744

#### SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

This Subordin(tition, Attornment and Non-Disturbance Agreement (the "Agreement") is made and entered into pe of the pipe day of Calcion, 1984, by and among Marshalls of Broadview, I..., Inc., an Illinois corporation ("Tenent"), American National Benk & Trust Company of Chicago, as Trustee under Trust Agreement dated December 1, 1991, and known as Trust No. (1)1954-06 (hereafter referred to as either "Landlord", or "Sorrower") and The Prudential Inc., once Company of America, a New Jersey corporation (hereafter referred to as "Lendar").

WHEREAS, Lender has made a loan (the "Loan") to Borrower evidenced by a note (the "Note") secured by a mortgage (the "Notegage"), dated Substituting and recorded among the records of the office of the Coan County. Illihois Recorder of Deeds constituting a first lien upon the land described in South "A" exteched hereto and made a part hereof and the improvements thereon, as will 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 (unlientlyely, 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 Tellant to Landlord for the use end occupancy of the Marshalls store building located at prostylew Village Square, Broadview, Illinois (the "Fremises") by Tenant, as more fully set forticin the lease (hereafter, the lease and all present and future amendments and modifications 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

249.50sr

E 117166/N941435

Tenant shall not be disturbed in its peaceful possession of the Premises as a result of actions taken by Lender pursuent to its rights under the Mortgage; and

WHEREAS, Tenant and Lander are both willing to provide such assurances to each other upon and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above, the mutual promises hareinsfter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

- 1. <u>Subordination and Attenment.</u> The Lease and all of the rights of Tenant therounder shall be and are hereby declared to be and at all times hereafter shall be and remain subject and subordinate in all respects to the lien of the Mortgage and to all renowals, modifications, consolidations, replacements and extensions thereof and all of the rights of the Lander thereunder and all other documents securing the Note.
- 2. Tenant hereby represents and warrants to Lender that it has not subordinated the Lease or any of its rights thorounder to any lien or murgage other than the Mortgage.
- 3. Lander's Notice and Cure Bights. Tenent agrees with Lender that, from and after the date hereof until payment in full of the indebtedness under the Note. Tenant will not terminate the Lause nor discontinue or abate the rent as a result of a default by Landlord under the Lease, without first giving the Lender the same notice and the same opportunity to cure as is available to Landlord under the Lease. Tanent also agrees that. at the request of Lender, the rent payments due under the Lease shall be paid directly to Lender and any such payments to the Lander shall be credited against the rent due under the Lease as if made to the Landlord. Vehant shall have no responsibility to escertain whether such demand for payment by London's permitted under the Mortgage or any other documents related thereto. Landlord hersity waives any right, claim or demand it may now or hereafter have against Tenent by reas mof such payment to Lander, and any such payment to Lender shall discharge the obligation, of Tenant to make such payment to Landlord. Tenant agrees that prior to exercising ship of its rights and remedies under the Lease in the event of any default by Landlord there willer, including any rights of offset, defense or self help provisions contained in the Leese Cenent shall give written notice to Lender of the occurrence of default by Landlord and Lundoc shall have the same opportunity to cure such default as is available for Landlord under the Lease.
- 5. Non-Disturbance. So long as Tenant is not in default under the loase beyond any notice and cure period provided in the Lease, then Lender agrees with Tenant that in the event the interest of Landlord is acquired by Lender, or Lander acquired title to the Property or comes into possession of said Property by reason of foreclosure or enforcement of the Mortgage or the Note, or by a conveyance in lieu thereof, or by any other means, Tenant's possession of the Premises and Tenant's rights, privileges and obligations under the Lease shall not be disturbed, diminished or interfered with by Lander or any party claiming through Lander during the term of the Lease, including any extensions thereof permitted to Tenant, and the Lease shall continue in full force and

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 Lesse), and Lander further agrees that the Lesse shall not be terminated except in accordance with the terms of the Lesse. In the event Tenent is in default under the Lesse beyond all available cure periods, Lender shall have all of the rights of Landlord set forth in the Lesse.

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

Lander further agrees that if it obtains passassion 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 ours period provided in the Lease, Lender shall accept the attornment of Tenant and agrees that it will not join or the Tenant as a party in any proceedings to foreclose the Mortgage and that it shall satisfy and perform all of Landford'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 a ter the occurrence of the avents sat forth above, have the same remedies against Landford; provided, however, that Lender shall not be:

- a. liable to Tenent for demages 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 demages continue after lander obtains possession or title to the Property; or
- b. subject to any offsets, claims or defenses which Tonant might have against Landlord or against any prior landlord which arise prior to the data Lander 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 Lander 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 Tenent may have paid to Landlord or any other landlord unless such pre-payment is

- 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 Tenent with a termination right not currently set forth in the Loase, made without Lender's prior written consent: or
- e. bound to the Tenent subsequent to the date upon which the Lender transfers its interest in the Property to any third party; or
- obligated or Nable to Tenant with respect to the construction and completion of the initial improvements in the Premises for Tenent's use, enjoyment or occupancy. gravided, however, that Lander shall be liable for repair of frient 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 of any part thereof except to the extent specifically set forth in the Leese; or
- h. liable for the payment of any leasing commissions or other expenses for which Lendlord or any prior landlord incurred the abligation to pay; or
- i. bound or liable to Tenent under any oral or written notice given by Tenant to Landlord or any price landlord.
- i, bound under any provision of the Lecentrich may give rise to liabilities, duties or responsibilities of Cander for any matters relating to frezerdous materials or the invironment, except to the extent that such liabilities, fluties or responsibilities are caused by acts or omissions of Lancer or any prior landlord under the Leasu.
- 8. Obligations of Succeeding Owner. Tenent hereby agrees the salv entity or person which at any time hereafter succeeds to the interest of the Landlow under the Lease, including, without limitation, Lender, as a result of Lender's exercise of its rights under the Mortagge or as a result of any other means, or a purchaser from Lander, shall be Rebie 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.

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 melled 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 Netional Bank and Trust Company of Chicago

Trust No 114884-06 33 North LeSelle 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 Activition: Vice President

The Producted Insurance Company of America

130 East Flandolph Street, Suite 1300

Chicago, Mingla 60601

Attention: James L. Woolner, Jr., Esq.

or addressed as such party may from time to drive 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 amouded or modified in any manner other than by an agreement in writing, algred by the perdod hereto or their respective successors in interest or easigns, 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 downed to include the acquisition of Landlord's estate in the Property by voluntary deed, a sale iment or other conveyance or transfer in lieu of foreclosure; and the word "Lander" shell include the Lender herein specifically named and any of its successors, participants and assigns, including anyons 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. <u>Conflicts with Lease</u>. 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.

- 10. <u>Proceeds of Casualty or Condamnation</u>. The interest of Tenant under the Lease in and to any proceeds of insurance erising from any casualty to the Promises or the Property and all interest of Tenent in and to any award for the taking of the Property or the Premises under the power of eminent domain or any payment in fleu of such taking shall be subordinate to the interests of the Lender therein, provided, however, that Lender egrees that any such proceeds or award shall be distributed in the manner set forth in the Lease.
- 11. <u>Governing Law: Vanue.</u> This Agreement shell be construed in secondance with the laws of the State of Illinois and any litigation arising out of this Agreement shell be brought in the courts of the State of Illinois or in the sourts of the United States for the Northern District of the State of Illinois and all parties hereto consent to the venue of such courts.
- Effect of Agreement. Landiord joins in the execution and delivery of this Agreement for the purpose of evidencing its consent to the terms and provisions hereof, and as between Landiord and Tenent, nothing herein contained shall be deemed to alter or modify the Lande. As between Lander and Landlord, nothing contained herein shall be deemed to alter or modify the terms and conditions of the Note, the Mortgage, or any other document or agreement regarding the mortgage loan made by Lander to Borrower.
- 13. Authority. The individuals executing this Agreement hereby represent and warrant that they are empoyed and duly authorized to so execute this Agreement on behalf of the parties they represent.

9487574

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

		TENANT:
.· .·	ATTENT:	MARSHALLS OF BROADVIEW, IL. INC.
:	March Co. Jane Control Co. Control Co.	By: Howard Haronin (SEAL)
t participat	A the name of they as of the water have our and they are	LANDLORD:
The instrument of the control of the fraction of the structure of the stru	withous and land to the material was profit to the personal to the material and the personal to the per	American National Bank & Trust Company of Chicago as Trustee as Aforesaid
enforceants against the coverant undertained o	indexy min assumed to of minnly incoment.  The second of the tribute in the instrument.  The second of the tribute in the instrument.  Assumed the second of the tribute in the instrument.  Assumed the second of the tribute in the instrument.  Assumed the second of the tribute in the instrument.	Title: PROUD GEAL
	ATTEST:	LENDER:
	Assistant Secretary	THE PRUDENTIAL INSURANCE COMPANY OF AMERICA  BY JULY 7 (BEAL)  WICH President
	August 2, 1993, executed and de undersigned hareby consents to t remain bound to Lander under the (	under the Leese Grantee (the "Guaranty") dated livered by it to and for the benefit of Landlord. The he foregoing Agreement and agrees to become and guaranty, subject to and in agrardance with the terms the Tenant becomes bound to the Lander under the
	WITNESS:	GUARANTOR:
		MELVILLE REALTY COMPANY, INC. & New York corporation
		Mv: (SEAL)

Tide:

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

	TENANT:
ATTENT!	MARSHALLS OF BROADVIEW, IL. INC.
The Hue I	Title:
MU/51831	LANDLORD:
900/X	American National Bank & Trust Company of Chicago as Trustee as Aporesaid
O <sub>x</sub>	By: (SEAL)
	Tide:
ATTEST:	LENDER:
	THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
Ancienna Canada	(SEAL)
Assistant Secretary	Zing rigalowit
August 2, 1993, executed and	tor under the Lease Quanintee (the "Guaranty") delivered by it to and for the benefit of Landlord.

ď remain bound to Lender under the Guaranty, subject to and in ascerdance 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. 1 New York corporation

Isseene Martinaire

(SEAL)



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

WITNESS:

以下的特殊,是是一种的一种,不是一种的一种,

**GUARANTOR:** 

MARSHALLS, INC., a Mana, hundles corporation

Titler Vice President

To Or Cook County Clark's Office

STATE O	FILLINOIS )			
COUNTY	) <b>98.</b> Of Cook )			
	1. 10 100 000 000	a Notary Pu	blic in and for said	County, in the State
eforesaid, me this	OCT 1 1 1994 by	het the foregoing	Instrument was a	
SECOND NO.	Baran Galaman		, of American Neti	onal Bank and Trust
Compur	of Chicago, a national t	benking essociat	lon, Trustee under	a Trust Agreement
dated Dec	amber 1, 1991, and kno GD/SN under my ha			40C1 T 7 1834
	O <sub>f</sub> CO <sub>C</sub>		m. Sovien Notary Publi	<u>ki</u>
My Commi	lssion Expires:			
				****
			MCIAL SEA	<i>L</i> "

NOTARY PUB IC, LIATE OF ILLINOIS My Commission Expires 06/27/96

750 Pinco

3487574

COUNTY OF (SEEX.)

If Many Ann Mocifes, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that the foregoing instrument was acknowledged before me this Aday of County. by Harving Community Resident Marshalls of Broadview. IL, Inc., an illinois corporation, on behalf of said corporation.

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

May an Muella.

Notary Public

Clark's Office

My Commission Expires:

THY COMMISSION COP. NOV. 17, 2000

STATE OF ILLINOIS ) 89 COUNTY OF COOK )

I. Elizabett A Brusse Notary Public in and for said County, in the State aforosaid, DO HERESY CERTIFY that the foregoing instrument was acknowledged before me this Life day of October 19by David During, 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 Life day of October 1984.

Oighell a. Conuen

My Commission Expires.

2/27/95

"OFFICIAL SEAL"
Elizabeth A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth
A. Bruen
Notary Public, State of Elizabeth

County Clark's Office

Community of ) 88.

1. Mary Annibuller a Notary Public in and for seld County, in the State aforesaid, DO HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 5 day of Chilly by Thurstell Grassing, Vice President of Minyslanile, The and Marsselhusethe Curpokition , on behalf of seld corporation.

GIVEN under my hand and Notarial Seel this 5th day of Catcher. 1994.

Many ann Mueller

Notary Public

May an Muellar Notary Public

My Commission Expires:

My commission cap, flow 17, 2001

STATE OF New York ) SS.

I. Resume Mastronavida a Notary Public In and for said County, in the State stormand, DO HEREBY CENTIFY that the foregoing instrument was acknowledged before me this 1th day of October, by Hemeth A. Della Rocco Vice President of Melville Realty Company, Inc., a New York sorperation, an behalf of said corporation.

GIVEN under my hand and Notarial Seel this 1th day of October, 1984.

Escarse Mastromaries
Notary Public

My Commission Expires

R DSEANNE MASTROMARINO
Notary Fucic. State of New York
No. 11 A5022558
Qualified in W. J. Dester County
Commission Experse January 18, 1996

\$457574

#### 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 OR LOT 7 OF SAID BROADVIEW VILLAGE SOUAKS: 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 (5 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 LIEN OF LOT 7 IN SAID BROADVIEW VILLAGE SQUARE: THENCE NORTH 00 DEGREES 05 MINUTES 44 EAST, ALONG THE WEST LINE OF SAID LOT 7 IN BROADVIEW VILLAGE SOUARE, 167,67 FEET, TO THE POINT OF BEGINNING) AND LOTS 10, 11, AND 12 W 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 VIHICULAR 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, 12 IN BROADVIEW VILLAGE SQUARE AFORESAID.

#### Permanent Tax Index Numbers:

15-22-400-001

15-22-400-004

15-22-411-001