

# UNOFFICIAL COPY

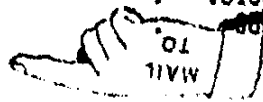
94875750

**RECORDING REQUESTED BY:**

The Prudential Insurance Company of America

**AND WHEN RECORDED MAIL TO:**  
**PREPARED BY:**  
David A. Lapins, Esq.  
Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
Chicago, Illinois 60606

DEPT-01 RECORDING \$33.50  
T40011 TRAN 4111 10/12/94 14:34:00  
#8163 TRV \*-94-875750  
COOK COUNTY RECORDER



PRUDENTIAL LOAN NO. 6 100 569 **94875750**

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

THIS AGREEMENT, made and entered into as of the 10<sup>th</sup> day of October, 1994, by and between **KMART CORPORATION**, a Michigan Corporation, formerly known as S. S. KRESGE COMPANY ("Tenant"), whose address is 3100 West Big Beaver Road, Troy, Michigan 48084, and **THE PRUDENTIAL INSURANCE COMPANY OF AMERICA** ("Lender"), whose address is One Prudential Plaza, Suite 1400, Chicago, Illinois 60601.

A. Lender has agreed to make a mortgage loan (the "loan") to American National Bank and Trust Company of Chicago, not personally, but solely as Trustee under Trust Agreement dated December 1, 1991 and known as Trust No. 114854-06 (the "Borrower") to be secured by a mortgage (the "Mortgage") on the real property legally described in Exhibit "A" attached hereto (the "Premises"); and

B. Tenant is the present lessee under a lease dated June 23, 1993, made by American National Bank and Trust Company of Chicago, not personally, but solely as Trustee under Trust Agreement dated December 1, 1991 and known as Trust No. 114854-06, 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 Mortgage 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:

*J. Ball*  
*13*  
*E 117/66/1994/435*  
*Card Co. Ill.*

*33.50*

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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 Mortgage.

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 Mortgage unless such joinder is necessary to foreclose the Mortgage 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.

Lender further agrees that if it obtains possession or title to the Premises during the Lease term, Lender 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 that Tenant might have had 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 Premises, unless such act or omission is continuing; 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 Premises, or unless same arises in connection with a continuing default; or

c. bound by any minimum rent which Tenant may have paid to Landlord or any other landlord; or

d. bound by any amendment or modification of the Lease made without Lender's prior written consent; or

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e. 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 Tenant shall retain all rights and remedies under the lease, including but not limited to cure and recoupment or lease termination; or

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 brought to enforce the Mortgage 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 other such 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.

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 Mortgage and acquisition of any or all of the Premises made by Tenant during the term of the Mortgage shall be made subordinate and subject to the Mortgage.

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 Mortgage 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

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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 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. 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.

"Lender"

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

WITNESS: [Signature]  
By: [Signature]  
Its: Vice President

"Tenant"

KMART CORPORATION, a Michigan corporation formerly known as S. S. KRESGE COMPANY

WITNESS: [Signature]  
By: [Signature]  
M. L. Skiles,  
Senior Vice President  
And: [Signature]  
D. H. Burdick II  
Assistant Secretary

A: SUB4924

American National Bank And Trust Company of Chicago  
NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE

UNDER TRUST NO. 11485406  
BY [Signature]  
SECOND VICE PRESIDENT  
[Signature]  
ASSISTANT SECRETARY

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

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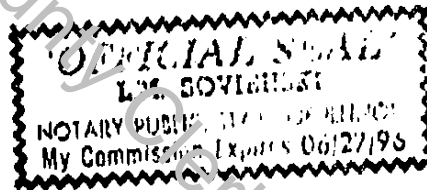
STATE OF ILLINOIS )  
                          ) SS.  
COUNTY OF COOK )

I, E. M. SOVIENSKI, a Notary Public in and for said County, in the State  
aforesaid, DO HEREBY CERTIFY that the foregoing instrument was acknowledged before me  
this OCT 11 1994 day of \_\_\_\_\_ by P. JOHANSEN and DEBRA L. WHITE of the \_\_\_\_\_  
ASSISTANT SECRETARY, respectively, of American National Bank and Trust Company  
of Chicago, a national banking association, Trustee under a Trust Agreement dated December  
1, 1991, and known as Trust No. 114854-06, on behalf of said Trustee.

GIVEN under my hand and Notarial Seal this OCT 11 1994 day of \_\_\_\_\_, 1994.

E. M. SOVIENSKI  
Notary Public

My Commission Expires:  
\_\_\_\_\_



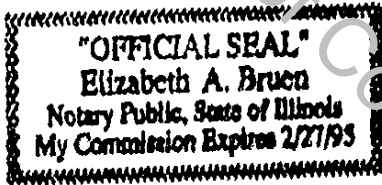
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STATE OF Illinois )  
COUNTY OF Cook ) SS

On this 11th day of October, 1994, before me personally appeared DAVID DURNING, to me known to be the Vice President of THE PRUDENTIAL INSURANCE COMPANY, 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.



Elizabeth A. Bruen  
Notary Public  
County of Cook  
My commission expires: 2/27/95

STATE OF MICHIGAN )  
COUNTY OF OAKLAND ) SS

On this 11th day of October, 1994, before me personally appeared M.L. Skiles and C. H. Burdick II to me known to be the Senior Vice President and Assistant Secretary respectively, 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.

Deborah S. Hoult  
Notary Public  
County of Oakland  
My commission expires: 2-22-95

DEBORAH S. HOULT  
Notary Public, Lapeer County, Michigan  
Acting In Oakland County, Michigan  
My Commission Expires February 22, 1995

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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 LIEN 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