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2001-12-11 09:11:14

Cook County Recorder 41.50

WALGREEN CO.  
200 Wilmot Road, Dept. #51  
Deerfield, Illinois 60015  
Attn: Lola Allen-Muhammad (#6238)



0011168094

*This Instrument Prepared by:*

*200 Wilmot Road, Deerfield, Illinois 60015*

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

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** made in multiple copies as of the 30th day of November, 2001, by and between **FIRST BANK OF GICHLAND PARK**, a national banking association ("Mortgagee"), **BSG 95<sup>th</sup> & JEFFERY, L.L.C.**, an Illinois limited liability company ("Landlord") and **WALGREEN CO.**, an Illinois corporation ("Tenant");

**WITNESSETH:**

**WHEREAS**, Mortgagee is the holder of a Note in the original principal amount of \$3,600,000.00, secured by a Mortgage or Deed of Trust ("Mortgage") dated February 23, 2001, recorded on April 20, 2001, as document number 0010322431 in the Official Records of Cook County, State of Illinois, covering the property legally described on Exhibit "A" attached hereto and made a part hereof;

**WHEREAS**, by Lease dated April 11, 2001, ("Lease"), recorded by Memorandum of Lease of even date, on October 5, 2001, as document number 0010932942 in the Official Records of Cook County, State of Illinois, Landlord, as landlord, leased to Tenant, as tenant, the property, at 9511 Jeffery in Chicago, Illinois, legally described on Exhibit "A" ("Leased Premises");

**WHEREAS**, Mortgagee, Landlord and Tenant desire to confirm their understanding with respect to said Lease and said Mortgage;

**NOW, THEREFORE**, in consideration of the Premises and the mutual covenants and promises contained herein and other good and valuable consideration, the parties agree as follows:

1. Subject to the covenants, terms and conditions of this Agreement, the lien of said Lease is hereby subordinated to the lien of said Mortgage. If there shall be a conflict between the terms of said Lease and the terms of said Mortgage, the terms of said Lease shall prevail.
2. In the event Mortgagee or any other party (collectively "Successor Landlord") acquires title or right of possession of the Leased Premises under said Mortgage through foreclosure, or otherwise, said Lease shall remain in full force and effect and Tenant shall continue occupancy of the Leased Premises in accordance with the terms and provisions of said Lease. In such event, during the period that it holds title to or possession of the Leased Premises, Successor Landlord shall be in all respects bound by said Lease as Landlord and by all of Tenant's rights thereunder. Successor Landlord's remedies pursuant to the Lease will be in full force and effect once Successor Landlord succeeds to the interest of Landlord under the Lease and once Successor Landlord is bound by all of the terms and conditions of said Lease.
3. So long as Successor Landlord shall be bound by the terms and conditions of said Lease, Tenant shall attorn to Successor Landlord when Successor Landlord is in possession of the Leased Premises, whether such possession is pursuant to Mortgagee's rights under said Mortgage (which such attornment shall be effective and self operative without the execution of any further instrument on the part of any of the parties hereto), or otherwise, and will continue occupancy of the Leased Premises under the same terms and conditions of said Lease.
4. Mortgagee shall not include Tenant in any foreclosure proceeding involving the Leased Premises, unless required by applicable state law for Mortgagee to accomplish the foreclosure and then not to interfere with or diminish Tenant's rights under said Lease or disturb Tenant's possession.
5. Mortgagee shall use reasonable efforts to advise Tenant upon the release, cancellation or termination of said Mortgage.
6. In the event that Successor Landlord succeeds to the interest of Landlord under such Lease, Successor Landlord shall not be:

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a). Liable for any act or omission of any prior landlord (including Landlord) or subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except for any defaults or remedies of which Tenant has notified Mortgagee prior to Successor Landlord becoming bound by the Lease in accordance with Article 2. Successor Landlord will not be held liable for any consequential damages for defaults of any prior Landlord; or

b). Bound by any payment of any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or

c). Bound by any amendment or modification of the Lease made without Mortgagee's consent.

7. During the continuance of said Mortgage, Tenant shall use reasonable efforts to give written notice to Mortgagee of all default by Landlord of those obligations under said Lease which are of a nature as to give Tenant a right to terminate said Lease, reduce rent, or to credit or offset any amounts against future rents, and Mortgagee shall have the same opportunity as provided to Landlord in said Lease (but shall not be required) to cure the same. In any event, Tenant's failure to provide Mortgagee such written notice shall not impair any rights granted or derived by Tenant under said Lease and/or this Agreement. In no event shall Tenant terminate the Lease as a result of any breach or default of the Lease unless Tenant has provided Mortgagee notice and afforded the Mortgagee the same opportunity to cure such breach or default as provided to Landlord in said Lease; provided, however, that Mortgagee shall not be obligated to remedy or cure any default of Landlord under the Lease.

8. Tenant hereby agrees that upon receipt of written notice from Mortgagee of a default by Landlord under said Mortgage, all checks for rent and other sums payable by Tenant under said Lease to Landlord shall, from the date of Tenant's receipt of such written notice, be delivered to and drawn to the exclusive order of Mortgagee until Mortgagee or a court of competent jurisdiction shall direct otherwise. Such an assignment of rent shall not relieve Landlord of any of its obligations under said Lease and shall not modify or diminish any rights granted to Tenant by said Lease or this Agreement, including but not limited to, any rights contained in said Lease which allow Tenant the right of so-called self help, offsets or deductions in the event of default or otherwise. Landlord hereby consents and agrees to the provisions of the paragraph and hereby authorizes Tenant to direct all rental and other payments under said Lease as provided by this

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paragraph. Landlord hereby relieves Tenant from any liability by reason of Tenant's payment of any sums under said Lease as required by this paragraph. Tenant shall have no obligation to verify the existence of any such default stated in the notice from Mortgagee under this Article.

9. (a) Subject to the terms of (b) below, Tenant agrees that the covenants of Landlord in Article 8 of the Lease shall not be binding upon land owned by Successor Landlord that acquires the interest of Landlord in the Leased Premises through foreclosure of the Mortgage or a deed in lieu thereof, (provided that Successor Landlord owned or mortgaged such land prior to the date that it acquires the interest of Landlord in the Leased Premises), but shall apply to any subsequent purchaser or transferee that is not an affiliate or subsidiary of Successor Landlord.

(b) Upon Successor Landlord's acquisition of Landlord's interest, during the period that it holds title to the Leased Premises, Successor Landlord will not execute any agreement that violates the restrictions set forth in Article 8 of the Lease or agree to any modification of a then existing agreement which extends the right of any third party to operate in a manner inconsistent with the restrictions set forth in Article 8 of the Lease.

10. In the event Successor Landlord acquires title or right of possession of the Leased Premises, Tenant acknowledges and agrees that the liability of such Successor Landlord under the Lease shall be limited to its interest in the property described on Exhibit "A" and the rents, income and profits therefrom. Notwithstanding anything herein to the contrary, Tenant shall have all of its equitable remedies against Successor Landlord. Nothing contained herein shall otherwise limit Tenant's rights or remedies as provided in the Lease.

11. All notices under this Agreement shall be deemed to have been duly given if made in writing and sent by United States certified or registered mail, postage prepaid, or by overnight delivery service providing proof of receipt, and addressed as follows:

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If to Mortgagee: First Bank of Highland Park  
1835 First Street  
Highland Park, Illinois 60035

If to Tenant: 200 Wilmot Road  
Deerfield, Illinois 60015  
Attention: Law Department

If to Landlord: BSG 95<sup>th</sup> & Jeffery, L.L.C.  
c/o Terraco, Inc.  
8707 Skokie Boulevard  
Suite 230  
Skokie, IL 6007

provided that each party by like notice may designate any future or different addresses to which subsequent notices shall be sent. Notices shall be deemed given upon receipt or upon refusal to accept delivery.

12. Tenant agrees that the right of first refusal shall not apply to Successor Landlord through a foreclosure, deed-in-lieu of foreclosure or any other enforcement action under the Mortgage; provided, however, such right of first refusal shall apply to subsequent purchasers of the Property.

13. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

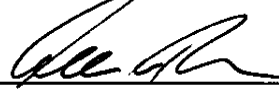
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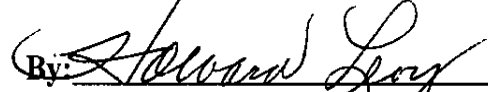
14. This Agreement shall also bind and benefit the heirs, legal representatives, successors and assigns of the respective parties hereto, and all covenants, conditions and agreements herein contained shall be construed as running with the land.

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

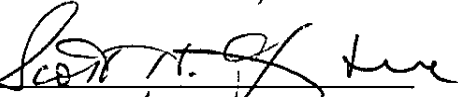
WALGREEN CO.

*Jan*  
  
Allan Resnick, Vice President

FIRST BANK OF HIGHLAND PARK

By:   
Its: VICE CHAIRMAN

BSG 95<sup>TH</sup> & JEFFERY, LLC

By:   
Its: member

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STATE OF ILLINOIS            )  
  )  
COUNTY OF LAKE            )

I, Lola Allen-Muhammad, a Notary Public, do hereby certify that Allan Resnick , personally known to me to be an Vice President, respectively, of WALGREEN CO., an Illinois corporation, and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice President of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the purposes therein set forth.

Given under my hand and notarial seal this 14<sup>th</sup> day of November, 2001.

  
\_\_\_\_\_  
Notary Public

My commission expires: 

**OFFICIAL SEAL**  
**LOLA ALLEN-MUHAMMAD**  
**NOTARY PUBLIC, STATE OF ILLINOIS**  
**MY COMMISSION EXPIRES: 06/01/04**

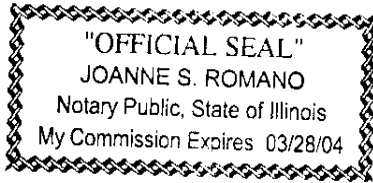
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STATE OF Illinois )  
 )  
COUNTY OF Lake )

I, the undersigned, a Notary Public, do hereby certify that Howard Levy, personally known to me to be the Vice Chairman, of First Bank of Highland Park, and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that he signed the foregoing instrument as such Vice Chairman of said Bank as the free and voluntary act and deed of said Bank, for the purposes therein set forth.

Given under my hand and notarial seal this 20<sup>th</sup> day of November, 2001.



Joanne S. Romano  
Notary Public

My commission expires: 3/28/04



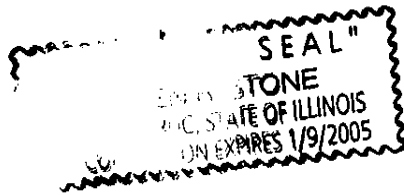
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STATE OF Illinois )  
)  
COUNTY OF Cook )

I, the undersigned, a Notary Public, do hereby certify that Scott H. Gendell, personally known to me to be the Manager of BSG 95<sup>th</sup> & Jeffery, LLC and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that as such Manager he signed the foregoing instrument as his free and voluntary act, and as the free and voluntary act and deed of said LLC, for the purposes therein set forth.

Given under my hand and notarial seal this 19<sup>th</sup> day of November, 2001.



  
\_\_\_\_\_  
Notary Public

My commission expires:

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EXHIBIT "A"

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## LEGAL DESCRIPTION OF SHOPPING CENTER

### PARCEL 1:

THAT PART OF BLOCK 12 IN VAN VLISSINGEN HEIGHTS SUBDIVISION; A SUBDIVISION OF PARTS OF THE EAST 2/3 OF THE NORTHWEST ¼ AND THE WEST ¼ OF THE NORTHEAST ¼ NORTH OF THE INDIAN BOUNDARY LINE OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 25, 1926 AS DOCUMENT 92866759 BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 23 FEET NORTH OF THE SOUTH LINE AND 136 FEET 5 ½ INCHES EAST OF THE WEST LINE OF LOT 14 IN SAID BLOCK 12 PROCEEDING 125 FEET THEREFROM; THENCE NORTH 173 FEET; THENCE WEST 125 FEET; THENCE SOUTH 173 FEET TO A POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

### PARCEL 2:

THAT PART OF BLOCK 12 IN VAN VLISSINGEN HEIGHTS SUBDIVISION AFORESAID BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 59 FEET NORTH OF THE SOUTH LINE AND 71 FEET EAST OF THE WEST LINE OF LOT 14 IN SAID BLOCK 12 PROCEEDING 65 FEET, 5 ½ INCHES EAST THEREFROM; THENCE NORTH 105 FEET, 6 INCHES; THENCE WEST 65 FEET 5 ½ INCHES; THENCE SOUTH 105 FEET, 6 INCHES, THENCE WEST 65 FEET 5 ½ INCHES; THENCE SOUTH 105 FEET 6 INCHES TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

### PARCEL 3:

LOTS 1 AND 2 AND THE WEST 7 FEET OF LOT 3 IN BLOCK 1 AND THE NORTH ½ OF THE VACATED EAST AND WEST ALLEY LYING SOUTH OF AND ADJOINING SAID LOTS 1 AND 2 AND THE WEST 7 FEET OF LOT 3 IN SAID BLOCK 1 AND THE EAST ½ OF THE VACATED CHAPPEL AVENUE LYING WEST OF LOT 1 IN BLOCK 1 AND LYING WEST OF AND ADJOINING THE NORTH ½ OF THE VACATED EAST AND WEST ALLEY LYING SOUTH OF AND ADJOINING LOT 1 IN BLOCK 1 ALL IN VAN VLISSINGEN HEIGHTS SUBDIVISION AFORESAID.

ALSO

LOTS 1 TO 10, BOTH INCLUSIVE, AND THE NORTH ½ OF THE VACATED EAST AND WEST ALLEY LYING SOUTH OF AND ADJOINING SAID LOTS 1 TO 10, BOTH INCLUSIVE, IN BLOCK 12 AND THE WEST ½ OF THAT PART VACATED CHAPPEL AVENUE LYING EAST OF AND ADJOINING SAID LOT 10 IN BLOCK 12 AND LYING EAST OF AND ADJOINING THE NORTH ½ OF SAID VACATED EAST AND WEST ALLEY, ALSO LOTS 11 TO 14 BOTH INCLUSIVE AND LOTS 35 TO 38, BOTH INCLUSIVE, AND ALL THAT PART OF THE VACATED NORTH AND SOUTH ALLEY LYING BETWEEN AND ADJOINING SAID LOTS 11 TO 14, BOTH INCLUSIVE AND THE SOUTH ½ OF THE VACATED EAST AND WEST ALLEY LYING NORTH OF AND ADJOINING SAID LOTS 11 AND 38 AND LYING NORTH AND ADJOINING SAID VACATED NORTH AND SOUTH ALLEY IN BLOCK 12, ALSO THAT PART OF THE WEST 6 FEET OF VACATED CHAPPEL AVENUE LYING EAST OF AND ADJOINING SAID LOTS 35 TO 38 BOTH INCLUSIVE (EXCEPT THE SOUTH ½ OF SAID VACATED STREET LYING EAST OF AND ADJOINING SAID SOUTH ½ OF SAID VACATED EAST AND WEST ALLEY IN BLOCK 12 ALL IN VAN VLISSINGEN HEIGHTS SUBDIVISION AFORESAID EXCEPTING THEREFROM PARCELS 1 AND 2 ABOVE DESCRIBED, IN COOK COUNTY, ILLINOIS.

### PARCEL 4:

LOT 3 (EXCEPT THE WEST 7 FEET THEREOF), LOT 4 AND THE WEST 7 FEET OF LOT 5 IN BLOCK 1 AND THE NORTH ½ OF THE VACATED EAST AND WEST ALLEY LYING SOUTH OF AND ADJOINING SAID LOTS (EXCEPT THE WEST 7 FEET THEREOF) LOT 4 AND THE WEST 7 FEET OF LOT 5 IN SAID BLOCK 1 ALL IN VAN VLISSINGEN HEIGHTS SUBDIVISION, A SUBDIVISION OF PARTS OF THE EAST 2/3 OF THE NORTHWEST ¼ AND THE WEST ¼ OF THE NORTHEAST ¼ NORTH OF THE INDIAN BOUNDARY LINE OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 25, 1926 AS DOCUMENT NUMBER 9285759, IN COOK COUNTY, ILLINOIS.

### PARCEL 5:

LOT 5 (EXCEPT THE WEST 7 FEET THEREOF) AND LOTS 6 TO 12, BOTH INCLUSIVE, IN BLOCK 1 IN VAN VLISSINGEN HEIGHTS, A SUBDIVISION OF PART OF THE EAST 2/3 OF

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THE NORTHWEST ¼ AND THE WEST ¼ OF THE NORTHEAST ¼ NORTH OF THE INDIAN BOUNDARY LINE OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6

THE NORTH ¼ OF THE VACATED EAST AND WEST ALLEY LYING SOUTH AND ADJOINING LOT 5 (EXCEPT THE WEST 7 FEET THEREOF) AND LOTS 6 TO 12, BOTH INCLUSIVE, IN BLOCK 1 IN VAN VLISSINGEN HEIGHTS SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS.

PARCEL 7:

LOTS 1 TO 11, BOTH INCLUSIVE, IN BLOCK 12 IN HUGH MAGINNIS 95<sup>TH</sup> STREET SUBDIVISION OF THE EAST ½ OF THE WEST ½ OF THE NORTHEAST ¼ OF FRACTIONAL SECTION 12, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, NORTH OF THE INDIAN BOUNDARY LINE, IN COOK COUNTY, ILLINOIS.

PARCEL 8:

LOTS 15 THROUGH 18 AND THE NORTH 19.69 FEET OF LOT 19 IN BLOCK 12; TOGETHER WITH ALL OF THE VACATED NORTH AND SOUTH ALLEY LYING EAST OF AND ADJOINING THE AFORESAID LOTS IN VAN VLISSINGEN HEIGHTS, A SUBDIVISION OF PARTS OF THE EAST 2/3 OF THE NORTHWEST ¼ AND THE WEST ¼ OF THE NORTHEAST ¼ NORTH OF INDIAN BOUNDARY LINE OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 9:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 8 AS CREATED IN INSTRUMENT RECORDED AS DOCUMENT NUMBER 20450919.

Property of Cook County Clerk's Office