

UNOFFICIAL COPY

DRAFTED BY, RECORDING
REQUESTED BY AND AFTER
RECORDING RETURN TO:

WALGREEN CO.
104 Wilmot Road MS #1420
Deerfield, Illinois 60015
Attn: Lola Muhammad
Re: Store # 7687

with a copy to:
James A. Simpson
Miller Canfield Paddock and Stone, PLC
840 West Long Lake Road
Suite 200
Troy, MI 48098-6058



Doc#: 0510403176
Eugene "Gene" Moore Fee: \$38.50
Cook County Recorder of Deeds
Date: 04/14/2005 04:39 PM Pg: 1 of 8

10541915 5:15

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made and entered into as of April 13, 2005, by and among **WALGREEN CO.**, an Illinois corporation (hereinafter referred to as "**Tenant**"), with a mailing address of 104 Wilmot Road, MS #1420, Deerfield, Illinois 60015, and **FULLERTON SAGE, LLC**, an Illinois limited liability company ("**Landlord**") and **LASALLE BANK NATIONAL ASSOCIATION**, as Landlord's Mortgagee (hereinafter referred to as "**Mortgagee**"), with a mailing address of 135 South LaSalle Street, Suite 3410, Chicago, Illinois 60603.

WITNESSETH:

WHEREAS, Tenant has heretofore entered into a Lease dated February 26, 2003, with Fullerton Kimball, LLC, whose interest in the Property and as landlord has been or will be transferred and conveyed to Landlord, whereby Landlord has demised to Tenant the premises described in said Lease as **Store # 7687**, which are hereinafter referred to as the "Leased Premises" located at: **NEC of Kimball & Fullerton, Chicago, Illinois**, on certain real estate legally described in **Exhibit A** attached hereto and made a part hereof (the "**Property**"); said Lease together with any amendments or modifications thereof, whether now or hereafter existing, shall be hereinafter referred to as the "**Lease**"; and

WHEREAS, Landlord has executed and delivered to Mortgagee, a Mortgage, Security Agreement and Fixture Filing and an Assignment of Leases and Rents, each dated April 13, 2005, and filed with the Recorder for Cook County, Illinois, as Document No. **0510403173+0510403176** together with related security documents (collectively the "**Mortgage**") encumbering the Property to secure an indebtedness of Three Million Nine Hundred Twenty Thousand and No/100 Dollars (\$3,920,000.00); and

WHEREAS, Mortgagee, as a condition to making the loan secured by the Mortgage ("**Loan**"), has requested the execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and in consideration of One Dollar (\$1.00) by each of the parties hereto paid to the other, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

1. The Lease is and shall continue to be subject and subordinate to the Mortgage and to all renewals, modifications, consolidations, replacements, and extensions thereof, to the full extent of the

#7687

NEC of Kimball & Fullerton (C)
3320 W Fullerton Avenue
Chicago, IL

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principal sum secured thereby and interest accrued and from time to time unpaid thereon, subject to the terms of this Agreement.

2. In the event Mortgagee or any other party 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, Mortgagee or any other party shall be in all respects bound by said Lease as Landlord and by all of Tenant's rights thereunder and Mortgagee or such other party shall have all rights and remedies of the Landlord under the Lease. In the event of a conflict between the provisions of the Lease and the Mortgage, the terms of the Lease shall prevail.

3. Tenant agrees that upon receipt of written notice from Mortgagee of an uncured default by Landlord under the Mortgage or the Note secured by the Mortgage, all checks for all or any part of rentals and other sums payable by Tenant under the Lease shall be delivered to and drawn to the exclusive order of Mortgagee until Mortgagee or a court of competent jurisdiction direct otherwise. Such an assignment of rents 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, Tenant's rights of offset or deduction. Landlord specifically consents to this paragraph 3. Landlord relieves Tenant of all liability for the payment of any sums as required under this paragraph 3. Tenant shall have no liability nor obligation to verify the existence of any default so alleged by Mortgagee. Tenant may rely on Mortgagee's notice under this paragraph 3 regardless of any conflicting or contrary demands by Landlord.

4. (a) Tenant shall use reasonable efforts to provide written notice to Mortgagee of all defaults by Landlord of those obligations under the Lease which are of such a nature as to give Tenant a right to terminate the Lease, to 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. Tenant's failure to provide such notice to Mortgagee shall not be a default by Tenant of this Agreement or the Lease, except that Mortgagee shall not be bound by defaults, offsets or deductions of which it has not received notice (as more fully set forth in paragraph 6 below), and except that Tenant shall not have the right to terminate the Lease unless Mortgagee has received notice of the Landlord's default and an opportunity to cure same pursuant to this paragraph 4(a).

(b) All notices under this Agreement shall be in writing and if addressed to Tenant, to 104 Wilmot Road, Ms 1420, Deerfield, Illinois 60015, Attention Law Department, and if addressed to Mortgagee, to:

LaSalle Bank National Association
135 South LaSalle Street
Suite 3410
Chicago, Illinois 60603
Attn: Real Estate Capital Markets

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.

5. In the event it should become necessary to foreclose the Mortgage, the Mortgagee thereunder will not join the Tenant as a party defendant in any foreclosure proceedings, except to the extent necessary by applicable state law to accomplish the foreclosure and then not to disturb Tenant's possession nor interfere with any of Tenant's rights under the Lease.

6. In the event that the Mortgagee or its designee shall, in accordance with the foregoing, succeed to the interest of the Landlord under the Lease, the Mortgagee agrees to be bound (or to cause its designee to be bound) to the Tenant under all of the terms, covenants and conditions of the Lease,

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and the Tenant agrees, from and after such event, to attorn to the Mortgagee, its designee or the purchaser at any foreclosure sale of the Property and/or Leased Premises or any part thereof, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated or such foreclosure proceedings had not been brought, and the Tenant shall have the same remedies against the Mortgagee, designee or purchaser for the breach of any agreement contained in the Lease that the Tenant might have under the Lease against the Landlord; provided, however, that the Mortgagee, designee or purchaser shall not be:

(a) liable for any act or omission of any prior landlord (including the Landlord) except those which constitute a default of Landlord under the Lease and of which Tenant has notified Mortgagee;

(b) subject to any offsets or defenses which the Tenant might have against any prior landlord (including the Landlord) except those which arise out of Landlord's default under the Lease and of which Tenant has notified Mortgagee;

(c) bound by any rent or additional rent which the Tenant might have paid for more than the current month to any prior landlord (including Landlord); or

(d) bound by any amendment or modification of the Lease made without the consent of Mortgagee subsequent to the date hereof;

7. Tenant agrees that Mortgagee may use all plans and specifications in connection with the Leased Premises to complete the construction of the improvements thereof.

8. If the Lease is terminated under Article 14 of the Lease due to a fire or other casualty, and Tenant is required to pay any insurance or self-insurance proceeds to Landlord as set forth in Article 20 of the Lease, then so long as the Mortgage and Loan shall be in effect, Tenant shall pay such proceeds by a check jointly payable to Landlord and Mortgagee.

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

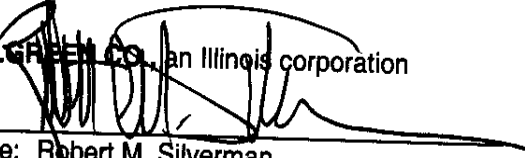
[Signature Page to Follow]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

TENANT:

WALGREEN CO., an Illinois corporation

By: 
Name: Robert M. Silverman
Its: Divisional Vice President

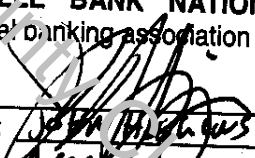
LANDLORD:

FULLERTON SAGE, LLC, an Illinois limited liability company

By: 
Name: Richard D. Morgese
Its: manager

MORTGAGEE:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: 
Name: John H. Hughes
Its: Association

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ACKNOWLEDGMENT

STATE OF ILLINOIS)
)
 COUNTY OF LAKE) ss.

On this 16 day of February 2005, before me appeared Robert M. Silverman, to me personally known, who, being by me duly sworn, did say that he is the Divisional Vice President of Walgreen Co., an Illinois corporation, and that said instrument was signed in behalf of said corporation by authority of its board of directors, and said Divisional Vice President acknowledged said instrument to be the free act and deed of said corporation.

(Seal)



Lola Allen-Muhammad
 Lola Allen-Muhammad
 Notary Public

My Notary term expires: 5-5-08

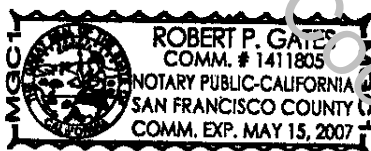
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ACKNOWLEDGMENT

STATE OF CALIFORNIA }
 } ss.
 COUNTY OF SAN FRANCISCO }

On this 30th day of March, 2005 the undersigned, a Notary Public in and for the said County and State, hereby certifies that before me personally appeared, Richard D. Morgese known to me or proved to me on the basis of satisfactory evidence, to be the Manager of Fullerton Sage, LLC, an Illinois limited liability company, who, having been duly authorized, executed the foregoing instrument as Manager on behalf of said limited liability company and acknowledged the due execution of the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein stated.

Witness my hand and Notarial Seal.



Robert P. Gates
 Print Name: Robert P. Gates
 County of San Francisco
 State of California
 My Commission
 Expires: May 15, 2007

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STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

I, Seong Park, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that John Higgins, the Associate Director of LaSalle Bank National Association, a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the use and purposes therein set forth.

Given under my hand and notorial seal this 1st day of April, 2005.

Seong Park

Notary Public

[SEAL]



My commission expires: 11/02/2007

Property of Cook County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1: LOT 54 AND 55 IN DEZENG'S LOGAN SUBDIVISION OF BLOCK 3 IN GARRETT'S SUBDIVISION OF PART OF THE EAST 1/2 OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOT 56 IN DEZENG'S LOGAN SQUARE SUBDIVISION OF BLOCK 3 IN GARRETT'S SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3: LOT 57 AND THE WEST 3 FEET OF LOT 58 IN DEZENG'S LOGAN SQUARE SUBDIVISION OF BLOCK 3 IN GARRETT'S SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4: THE EAST 22 FEET OF LOT 58 AND THE WEST 6 FEET OF LOT 59 IN DEZENG'S LOGAN SQUARE SUBDIVISION OF BLOCK 3 IN GARRETT'S SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5: THE EAST 19 FEET OF LOT 59 AND THE WEST 9 FEET OF LOT 60 IN DEZENG'S LOGAN SQUARE SUBDIVISION OF BLOCK 3 IN GARRETT'S SUBDIVISION IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6: THE EAST SIXTEEN (16) FEET OF LOT SIXTY (60) AND ALL OF LOT SIXTY ONE (61) AND THE WEST FIFTEEN (15) FEET OF LOT SIXTY TWO (62) IN DEZENG'S LOGAN SQUARE SUBDIVISION OF BLOCK THREE (3) IN GARRETT'S SUBDIVISION IN THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION TWENTY SIX (26), TOWNSHIP FORTY (40) NORTH, RANGE THIRTEEN (13), EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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