

UNOFFICIAL COPY



Doc#: 0515802137
Eugene "Gene" Moore Fee: \$48.00
Cook County Recorder of Deeds
Date: 06/07/2005 11:42 AM Pg: 1 of 13

8278332-Dd-Tms (2 of 2)

THIS DOCUMENT WAS PREPARED BY AND
WHEN RECORDED RETURN TO:

BEN R.HAYHURST, ESQ.
BRYAN CAVE LLP
2020 MAIN STREET, SUITE # 600
IRVINE, CALIFORNIA 92614

03690-01

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Box 400-CTCC

13/8

Property of Cook County Clerk's Office

UNOFFICIAL COPY

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

REN R. HAYHURST, ESQ.
BRYAN CAVE LLP
2020 MAIN STREET, SUITE 600
IRVINE, CALIFORNIA 92614

#03690-01

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made this 31 day of May, 2005, by and between SHEFFIELD AVENUE CVS, L.L.C. successor in interest to Super Crown Books Corporation, with offices at c/o CVS Pharmacy, Inc., ATTN: Property Administration Department, One CVS Drive, Woonsocket, Rhode Island 02895 ("Tenant") and Bridger Commercial Funding LLC, having its office at 100 Shoreline Highway, Building B, Suite 100, Mill Valley, California 94941 ("Mortgagee") and Sheffield Triangle Limited Partnership successor in interest to American National Bank Trust No. 117152-02 Dated December 13, 1993, having its office at c/o RN Realty, 225 West Illinois, Suite 350, Chicago, Illinois 60610 ("Landlord").

WITNESSETH:

WHEREAS, Tenant and Landlord have entered into a certain lease dated January 14, 1994, as assigned, modified, supplemented or amended by the documents listed on Exhibit A hereto (collectively, the "Lease") covering premises located at 1714 Sheffield Avenue, Chicago, Illinois ("Premises") and as more specifically set forth in the Lease; and

WHEREAS, Mortgagee has made or has agreed to make a mortgage loan in the original principal amount of \$3,360,000 ("Loan") to Landlord evidenced by a promissory note secured by, among other security, a certain Mortgage/Deed of Trust/Deed to Secure Debt and Security Agreement ("Mortgage") on Landlord's property; and

WHEREAS, the Mortgage, and any other documents or instruments evidencing or securing the Loan are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, Mortgagee has been requested by Tenant and by Landlord to enter into a non-disturbance agreement with Tenant;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, Mortgagee and Tenant and Landlord hereby agree and covenant as follows:

1. The Lease and any extensions, renewals, replacements or modifications thereof, and Tenant's interest in the Premises under the Lease, are and shall at all times be subject, subordinate, and inferior to the lien of the Loan Documents and to the lien of all renewals, modifications and extensions thereof, subject to the terms and conditions set forth in this Agreement.

2. Notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of fixed rent as set forth in the

UNOFFICIAL COPY

Lease, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof, shall not be diminished or interfered with by Mortgagee, and Tenant's occupancy of the Premises shall not be disturbed by Mortgagee for any reason whatsoever during the term of the Lease or any such extension or renewal thereof, except as would be permitted for Landlord to do so.

3. In addition, notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of rent or additional rent, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Mortgagee will not join Tenant as a party defendant, unless required by law, in any foreclosure action or other proceeding for the purpose of terminating Tenant's interest and estate under the Lease or for any other purpose.

4. If the interests of Landlord in the Premises shall be transferred to and owned by Mortgagee by reason of foreclosure or other proceedings brought by it, or by deed in lieu of foreclosure, or if Mortgagee takes possession of the Premises pursuant to any provisions of the Loan Documents, then: (i) Mortgagee and Tenant shall be directly bound to each other under all the terms, covenants and conditions of the Lease for the balance of the term thereof and for any extensions or renewals thereof which may be exercised by Tenant, with the same force and effect as if Mortgagee were the Landlord under the Lease; and (ii) Tenant does hereby attorn to Mortgagee as its landlord, said attornment to be effective and self-operative (without the execution of any further instruments), immediately upon Mortgagee succeeding to the interests of the Landlord under the Lease; provided, however, regarding items (i) and (ii) above, that Tenant shall have received written notice from Mortgagee that it has succeeded to the interests of the Landlord under the Lease. The respective rights and obligations of Tenant and Mortgagee upon such attornment, to the extent of the then-remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth from and after Mortgagee's succession to the interests of the Landlord under the Lease, and Tenant shall have the same remedies against Mortgagee for the breach of any agreement contained in the Lease that Tenant might have under the Lease against Landlord if Mortgagee had not succeeded to the interest of Landlord; provided, however, that Mortgagee shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), except to the extent such act or omission continues during the period of possession by Mortgagee or during a period during which Mortgagee is receiving rent from Tenant pursuant to Paragraph 5 hereof; or

(b) subject to any defenses which Tenant might have against any prior landlord (including Landlord) prior to the date that Mortgagee first takes possession of the premises; or

UNOFFICIAL COPY

(c) bound by any fixed rent which Tenant might have paid for more than the current month; or

(d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is in an escrow or other fund available to Mortgagee; or

(e) bound by any amendment or modification or waiver of any provision of the Lease made without the consent of the Mortgagee, which would reduce the lease term, rents payable, or square footage. Said consent shall be deemed given if a response by Mortgagee is not received within thirty (30) days of Landlord's request.

5. Tenant shall not be under any obligation to pay rent to Mortgagee until the Tenant shall have received written notice from Mortgagee that Mortgagee has succeeded to the interests of Landlord under the Lease or that Mortgagee has exercised its rights under the Loan Documents, and directing such payments be made to Mortgagee. Landlord by its execution of this Agreement hereby consents to such direct payments by Tenant to Mortgagee and hereby releases and discharges Tenant of, and from, all liability to Landlord on account of any such payments. Upon receipt of such notice, Tenant shall make future payments due under the Lease to Mortgagee until notified otherwise in writing in accordance with the terms of the Lease and Tenant shall not be liable to Landlord to account for such payments.

6. (a) Tenant shall notify Mortgagee in writing at the address set forth herein of the occurrence of any default or event of default by Landlord under the Lease which would give Tenant the right to cancel or terminate the Lease; and Tenant will grant to Mortgagee up to 45 days or a reasonable time (not to exceed 45 days) in which to cure Landlord's default (which time shall be at least the period of time granted to the Landlord by the Lease), provided, however, that Mortgagee shall give Tenant written notice of Mortgagee's intent to cure Landlord's default within ten (10) business days of receipt of Tenant's notice of Landlord's default. Tenant agrees that it will not terminate or cancel the Lease on account of such default until such notice to Mortgagee has been given, and Mortgagee has had the opportunity to cure any such default. Should Mortgagee fail to so notify Tenant of Mortgagee's intent to cure Landlord's default within said ten (10) business days, then Tenant shall have all available rights and remedies (including the right to cure Landlord's default) under the Lease, at law and/or in equity. It is expressly understood and agreed that the above shall not be deemed to create any obligation of Mortgagee to cure any such default or defaults.

(b) Mortgagee shall use reasonable efforts to copy Tenant on any notice of Mortgagor's default under the Loan Documents at the same time that Mortgagee shall serve a Notice of Default on Mortgagor.

UNOFFICIAL COPY

7. This Agreement may not be modified or amended, except by a writing by all parties hereto. Upon satisfaction of the Mortgage, this Agreement shall become null and void and be of no further effect.

8. Whenever in this Agreement it is provided that notice be given to or served upon any of the parties, each such notice or demand shall be in writing, and any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: If given or served by the Mortgagee, by mailing the same to the Tenant and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at the addresses listed on Page 1 of this Agreement, or at such other addresses as the Tenant and Landlord may from time to time designate by notice given to the Mortgagee; and if given or served by the Tenant, by mailing the same to the Mortgagee and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Mortgagee and Landlord at the addresses listed on Page 1 of this Agreement, or at such other addresses as the Mortgagee and Landlord may from time to time designate by written notice given to Tenant; and if given or served by Landlord, by mailing the same to Tenant and Mortgagee by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Tenant and Mortgagee at the addresses listed on Page 1 of this Agreement, or such other addresses as the Tenant and Mortgagee may from time to time designate by written notice given to Landlord.

9. Except as provided in the Lease, Tenant hereby waives any priority it may have over Mortgagee with respect to any share of any condemnation award for a taking of all or part of the Premises, except any award for Tenant's loss of trade fixtures or improvements or installations made by Tenant; and agrees that all of any such award, except as above provided, shall be first payable to Mortgagee.

10. Anything herein or in the Lease to the contrary notwithstanding, in the event that Mortgagee shall acquire title to the Premises, or shall otherwise become liable for any obligations of Landlord under the Lease, Mortgagee shall have no obligation, nor incur any liability, beyond Mortgagee's then interest, if any, in the Premises and the Lease, and Tenant shall look exclusively to such interest of Mortgagee, if any, in the Premises and the Lease, for the payment and discharge of any obligations imposed upon Mortgagee hereunder or under the Lease. Tenant agrees that with respect to any money judgment which may be obtained or secured by Tenant against Mortgagee, Tenant shall look solely to the estate or interest owned by Mortgagee in the Premises, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Mortgagee.

11. Notwithstanding anything herein to the contrary, Tenant shall not be deemed to be in default under any of the terms or conditions of this Agreement until Tenant has received a fully executed original copy of this Agreement.

UNOFFICIAL COPY


12. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns. In addition, this Agreement shall be binding upon any successor to Mortgagee's interest as Landlord of the Lease.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

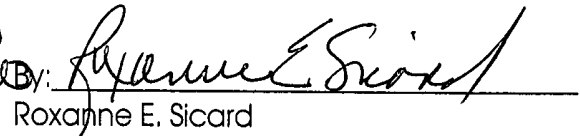
WITNESS:

TENANT:


SHEFFIELD AVENUE CVS, L.L.C.



 Marta C. DiMeglio



 By: Roxanne E. Sicard
 Assistant Secretary



 Peter J. Perry

MORTGAGEE:

Bidger Commercial Funding LLC

Name: _____

By: _____

Name: _____

Title: _____

Name: _____

LANDLORD:

Sheffield Triangle Limited Partnership

Name: _____

By: _____

Name: _____

Title: _____

Name: _____

UNOFFICIAL COPY

12. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns. In addition, this Agreement shall be binding upon any successor to Mortgagee's interest as Landlord of the Lease.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

WITNESS:

TENANT:

SHEFFIELD AVENUE CVS, L.L.C.

Marta C. DiMeglio

By: _____
Roxanne E. Sicard
Assistant Secretary

Peter J. Perry

MORTGAGEE:
Bridge Commercial Funding LLC

Name: _____

By: Paul O'Rear
Name: Paul O'Rear
Title: Senior vice President

Name: _____

LANDLORD:

Sheffield Triangle Limited Partnership

By: RN Realty Investments II, L.P.
its general partner

Mark B. Buttermen
Name: Mark B. Buttermen

By: _____
Name: Lliah S. Robinson
Title: President

Megan P. Danko
Name: Megan Danko

UNOFFICIAL COPY

STATE OF RHODE ISLAND)

) ss:

COUNTY OF PROVIDENCE)

On this 25th day of April, 2005, before me personally appeared Roxanne E. Sicard, who, being by me duly sworn, did depose and say that she resides in Cranston, Rhode Island; that she is Assistant Secretary of SHEFFIELD AVENUE CVS, L.L.C., the corporation described in and which executed the above instrument and that she executed this instrument on behalf of said corporation and that she had authority to do so.

Sheila C. Perkins

NOTARY PUBLIC

**Sheila C. Perkins, Notary Public
State of Rhode Island
My Commission Expires 7-10-06**

STATE OF _____)

) ss:

COUNTY OF _____)

On this ____ day of _____, 2005, before me personally appeared _____, who, being by me duly sworn, did depose and say that he/she resides at _____; that he/she is _____ of _____, the corporation described in and which executed the above instrument and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

NOTARY PUBLIC

STATE OF _____)

) ss:

COUNTY OF _____)

On this ____ day of _____, 2005, before me personally appeared _____, who, being by me duly sworn, did depose and say that he/she resides at _____; that he/she is _____ of _____, the corporation described in and which executed the above instrument and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

NOTARY PUBLIC

UNOFFICIAL COPY

STATE OF RHODE ISLAND)
) SS:
COUNTY OF PROVIDENCE)

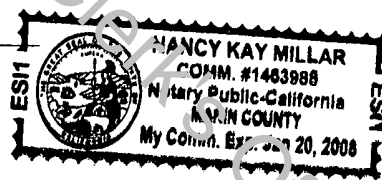
On this ____ day of April, 2005, before me personally appeared Roxanne E. Sicard, who, being by me duly sworn, did depose and say that she resides in Cranston, Rhode Island; that she is Assistant Secretary of SHEFFIELD AVENUE CVS, L.L.C., the corporation described in and which executed the above instrument and that she executed this instrument on behalf of said corporation and that she had authority to do so.

NOTARY PUBLIC

STATE OF California)
) SS:
COUNTY OF Marin)

On this 31 day of May, 2005, before me personally appeared PAUL O'REAN, who, being by me duly sworn, did depose and say that he/she resides at _____; that he/she is Senior Vice President of Bridger Commercial Funding, the corporation described in and which executed the above instrument and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

Nancy Kay Millar
NOTARY PUBLIC



STATE OF IL)
) SS:
COUNTY OF Cook)

On this 31 day of May, 2005, before me personally appeared Leigh S. Rabman, who, being by me duly sworn, did depose and say that he/she resides at _____; that he/she is The President, the corporation described in and which executed the above instrument and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

Patricia A. Butler
NOTARY PUBLIC



UNOFFICIAL COPY

EXHIBIT A

Lease Renewal dated October 23, 2003

Assignment and Assumption Agreement dated April 20, 2001

Assignment and Assumption Agreement dated May 1, 2001

Lease/Rent Commencement Agreement dated November 21, 1994

Memorandum of Lease dated January 14, 1994

Property of Cook County Clerk's Office

UNOFFICIAL COPY

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

BRIDGER COMMERCIAL FUNDING LLC
100 SHORELINE HIGHWAY, SUITE 100B
MILL VALLEY, CALIFORNIA 94941

ATTN: CLOSING DEPARTMENT

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

ASSIGNMENT AND CONVEYANCE

Effective as of May __, 2005 ("Closing Date"), BRIDGER COMMERCIAL FUNDING LLC, A MISSOURI LIMITED LIABILITY COMPANY ("Assignor") does hereby sell, transfer, assign, set over and convey to BANK OF AMERICA, N.A. ("Assignee") having an address of 214 North Tryon Street, Charlotte, North Carolina 28255, without recourse, all right, title and interest of the Assignor in and to:

1. That certain DEED OF TRUST and Absolute Assignment of Rents and Leases and Security Agreement (and Fixture Filing) executed by Sheffield Triangle Limited Partnership dated ____, 2005, and recorded as Instrument No. _____ in Cook County, Illinois ("DEED OF TRUST");
2. That certain Promissory Note Secured by DEED OF TRUST; and
3. The moneys due and to grow due thereon, with interest as specified therein, and all rights accrued or to accrue under the DEED OF TRUST and any and all other related security instruments that secure the indebtedness and/or obligations secured by the DEED OF TRUST.

This Assignment is made without representation, recourse, or warranty by Assignor except as set forth in that certain Mortgage Loan Purchase Agreement dated as of February 5, 2001, between Bank of America, N.A. and Bridger Commercial Funding LLC.

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement.

ASSIGNOR

BRIDGER COMMERCIAL FUNDING LLC,
a Missouri limited liability company

By: 

Paul O'Rear, Senior Vice President

UNOFFICIAL COPY

STATE OF CALIFORNIA)
COUNTY OF MARIN)
CITY OF MILL VALLEY)

CAPACITY CLAIMED BY
SIGNER:

On 5/26/05, before me, the undersigned, a
Notary Public in and for said State, personally appeared

Corporate Officer:
Senior Vice President
Title

Paul O'Rear

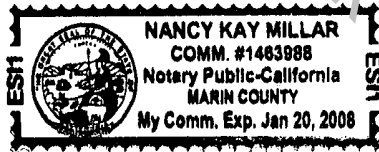
SIGNER IS
REPRESENTING:
Name of entity:

personally known to me, to be the person whose name is
subscribed to the within instrument and acknowledged to me
that he executed the same in his authorized capacity, and that by
his signature on the instrument the person, or the entity upon
behalf of which the person acted, executed the instrument.

Bridger Commercial Funding
LLC, a Missouri limited
liability company

WITNESS my hand and official seal,

Nancy Kay Millar
Signature of Notary



UNOFFICIAL COPY

STREET ADDRESS: 1714 SHEFFIELD AVENUE
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 14-32-420-002-0000

LEGAL DESCRIPTION:

LOTS 1 TO 3, BOTH INCLUSIVE, (EXCEPT THAT PART OF SAID LOT 3, WHICH LIES NORTH AND NORTHWESTERLY OF A LINE, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF SHEFFIELD AVENUE, 244.47 FEET SOUTH OF THE INTERSECTION OF SAID WEST LINE OF SHEFFIELD AVENUE, WITH THE SOUTHWESTERLY LINE OF CLYBOURN AVENUE AND RUNNING THENCE WEST AT RIGHT ANGLES TO SAID WEST LINE OF SHEFFIELD AVENUE, 81.58 FEET, MORE OR LESS, TO ITS INTERSECTION WITH A LINE DRAWN PARALLEL TO AND 164.47 FEET SOUTHEASTERLY OF THE SOUTHEASTERLY LINE OF WILLOW STREET AS NOW OCCUPIED; THENCE SOUTHWESTERLY ALONG SAID PARALLEL LINE, 91.71 FEET, MORE OR LESS, TO ITS INTERSECTION WITH THE NORTHEASTERLY LINE OF MARCEY STREET) **ALL** IN BLOCK 9 IN THE SUBDIVISION OF LOTS 1 AND 2 IN BLOCK 8 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE SOUTH 1/2 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office