

UNOFFICIAL COPY 08142988

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Cook County Recorder 45.50



08142988

Loan No. 2



LTIC 98-12092

Chicago, IL
Cook County

This document was prepared by,
and after recording should be
returned to Thomas A. Hauser, Esquire
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
300 East Lombard Street, 19th Floor
Baltimore, Maryland 21202-3268

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

LEGG MASON REAL ESTATE SERVICES, INC.,
a Pennsylvania corporation
("Lender")

to

BOND DRUG COMPANY OF ILLINOIS, INC., an Illinois corporation
("Tenant")

and

WEC 98F-9 LLC,
a Delaware limited liability company
("Landlord")

Dated December 7, 1998, but Effective as of December 10, 1998

Lawyers Title Insurance Corporation

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Loan #2
Cook County, Illinois

88626180

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

NOTICE: THE SUBORDINATION PROVIDED FOR IN THIS AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE SECURITY INTEREST IN THE PROPERTY CREATED BY SOME OTHER OR LATER INSTRUMENT.

This Subordination, Non-Disturbance and Attornment Agreement (this "**Agreement**") is executed December 7, 1998, effective as of December 10, 1998, between LEGG MASON REAL ESTATE SERVICES, INC., a Pennsylvania corporation, its successors and assigns ("**Lender**"), BOND DRUG COMPANY OF ILLINOIS, INC., an Illinois corporation ("**Tenant**"), and WEC 98F-9 LLC, a Delaware limited liability company ("**Landlord**").

RECITALS

A. Tenant is the tenant under a certain lease with Landlord (the "**Lease**") dated December 8, 1998, of the premises described in **Exhibit A** attached hereto and made a part hereof (the "**Property**"), together with the buildings and improvements located on the Property and the equipment and fixtures attached to such buildings and improvements (collectively, the "**Premises**"). A memorandum or short form of the Lease is intended to be recorded forthwith with the Registry of Deeds/Office of the Clerk in the county and state where the Property is located (the "**Registry**").

B. This Agreement is being entered into in connection with a mortgage loan (the "**Loan**") from Lender to Landlord, secured by, inter alia: (a) a first Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing on and of the Premises (the "**Indenture**") from Landlord dated as of even date herewith to be recorded with the Registry immediately prior to the recording of this Agreement; and (b) a first Assignment of Lease and Rents (the "**Assignment of Lease and Rents**") dated as of even date herewith to be recorded with the Registry immediately prior to the recording of this Agreement. The Indenture and the Assignment of Lease and Rents are hereinafter collectively referred to as the "**Security Documents**".

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AGREEMENT

08142988

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Tenant agrees that the Lease is and shall be, at the option of Lender upon notice to Tenant, at any time and from time to time, either subject and subordinate, or superior, to the Security Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Security Documents, to the full extent of all amounts secured by the Security Documents from time to time. Such options of the Lender may be exercised an unlimited number of times. If subordinated, said subordination is to have the same force and effect as if the Security Documents and such renewals, modifications, consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any memorandum or short form thereof. This Agreement shall constitute notice to Tenant that for the time being, until further written notice to the contrary, Lender elects that the Lease is and shall be subject and subordinate as aforesaid. In addition, to the extent that the Lease shall entitle Tenant to notice of any mortgage, this Agreement shall constitute such notice to Tenant with respect to the Indenture.
2. Notwithstanding the provisions of Section I hereof, Lender agrees that, if the Lender exercises any of its rights under the Security Documents, including an entry by Lender pursuant to the Indenture or a foreclosure of, or exercise of any power of sale under, the Indenture or any sale or transfer in lieu thereof, Lender shall be bound by the terms of the Lease and shall not disturb Tenant's right of quiet possession of the Premises under the terms of the Lease so long as (i) no "Event of Default" (as defined in the Lease) shall have occurred and be continuing and (ii) Tenant shall not be in default of any of its obligations under this Agreement beyond any applicable notice and/or cure periods provided for herein.
3. Tenant agrees that, in the event of a foreclosure of the Indenture by Lender or the acceptance of a conveyance in lieu of foreclosure by Lender or any other succession of Lender to ownership of Landlord's interest in the Premises, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease. Upon the written request of either Lender or Tenant to the other given on or after any such foreclosure, acceptance of a conveyance in lieu of foreclosure or other succession of Lender to ownership of Landlord's interest in the Premises, Lender, as landlord, and Tenant, as tenant, shall execute a lease of the Premises containing, subject to the terms hereof, all of the same terms, provisions, options and conditions as are contained in the Lease between Landlord and Tenant, which lease shall be for the then unexpired portion of the term of the Lease.

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4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

- (a) liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord), or
- (b) subject to any defense or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord), or
- (c) bound by any payment of "Basic Rent" or "Additional Rent" (as such terms are defined in the Lease) which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then defaulting Landlord), or
- (d) bound by any obligation of any prior Landlord to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any such prior Landlord's interest, or
- (e) accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender, or
- (f) bound by any amendment or modification of the Lease for which the consent of Lender is required under the Lease (which consent, under certain circumstances expressly set forth in the Lease, is not to be unreasonably withheld by Lender) or by any waiver or forbearance on the part of any prior Landlord (including, without limitation, the then defaulting Landlord) made or given without the written consent of Lender; or
- (g) liable with respect to warranties or indemnities of any nature whatsoever made by any prior Landlord (including, without limitation, the then defaulting Landlord), including any warranties or indemnities regarding use, compliance with zoning, hazardous wastes or environmental laws, Landlord's title, Landlord's authority, habitability, fitness for purpose, or possession.

In the event that Lender shall acquire title to the Premises, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Premises, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Premises for the payment and discharge of any obligations or liability imposed upon Lender hereunder, under the Lease or under any new lease of the Premises, provided however Tenant may exercise any equitable remedies.

5. Tenant hereby agrees to give to Lender copies of all notices of Landlord default(s) under the Lease, any Condemnation proceedings instituted against the Premises, Tenant's Termination Notice or Substitution Notice (herein collectively, the "Notices") in the same manner as, and whenever, Tenant shall give any of the Notices to Landlord, and Lender shall not be deemed to have been notified of any such matters unless Tenant shall have given any such Notices to Lender. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's other obligations under the Lease. If, in curing any such default, Lender requires access to the Premises to effect such cure, Tenant shall furnish access to the Premises to Lender as required by Lender to effect such cure at all reasonable times; provided that Tenant's occupancy, use and enjoyment of the Premises is not unreasonably disrupted thereby. Unless Lender otherwise agrees in writing, Lender shall have no liability to perform Landlord's obligations under the Lease, both before and after Lender's exercise of any right or remedy under this Agreement. No Landlord default under the Lease shall exist or shall be deemed to exist (i) as long as Lender, in good faith, shall have commenced to cure such default within the above referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (ii) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by Lender, as long as Lender, in good faith, shall have notified Tenant that Lender intends to institute proceedings under the Security Documents, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of the Lease by reason of any default thereunder by Landlord, or in the event of Landlord's bankruptcy, the Lease is rejected or otherwise rescinded by the bankruptcy trustee of Landlord's bankruptcy estate, upon Lender's written request, which must be given (if at all) within thirty (30) days after any such termination, rejection or rescission, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to Lender or its designee or nominee a new lease of the Premises for the remainder of the term of the Lease upon all of the terms, covenants and conditions of the Lease, subject, however, to the curing of the default giving rise to such termination (unless such default is not susceptible to a cure). Neither Lender nor its designee or nominee shall become liable under the Lease unless and until Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the owner of Landlord's interest in the Premises. Lender shall have the right, without Tenant's consent but subject to the provisions of this Agreement, to foreclose, or exercise any power of sale under, the Indenture or to accept a conveyance in lieu of foreclosure of the Indenture or to exercise any other remedies under the Security Documents.

6. Tenant agrees that Tenant shall not, without the prior written consent of Lender, which consent under certain circumstances expressly set forth in the Lease is not to be unreasonably withheld by Lender, (a) amend or modify the Lease except as provided in Section 16(e) of the Lease, (b) terminate, cancel or surrender the Lease except in accordance with the express provisions thereof, or enter into any agreement with Landlord to do so, or (c) pay any installment of Basic Rent or Additional Rent under the Lease more than one month in advance of the due date thereof or otherwise than in the manner provided for in the Lease. Tenant agrees that no prepayment of Basic Rent or Additional Rent paid under the Lease more than one month in advance, no amendment or modification of the Lease that requires Lender's prior written consent pursuant to the Lease (which consent, under certain circumstances expressly set forth in the Lease, is not to be unreasonably withheld by Lender), no surrender or cancellation of the Lease (except in accordance with the express provisions thereof), and no waiver or consent by Landlord under the terms of the Lease, shall be binding upon or as against Lender, as holder of the Security Documents and as Landlord under the Lease if it succeeds to that position, unless consented to in writing by Lender. Tenant acknowledges and agrees that the Security Documents contain provisions requiring Landlord to obtain Lender's consent for any matter requiring Landlord's consent under the Lease. Tenant agrees that whenever Landlord (but not Lender) consent is required under the Lease, Lender will not unreasonably withhold or delay such consent, but such reasonableness will be determined from Lender's and not Landlord's perspective. Where Lender's consent is specifically and expressly required under the Lease, unless otherwise provided therein, Lender may withhold its consent in its sole and absolute discretion.
7. Tenant has no knowledge of any prior assignment or pledge of the rents accruing under the Lease by Landlord. Tenant hereby acknowledges the Assignment of Lease and Rents. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignment, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignment or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing.
8. If Tenant is no longer publicly traded, then upon a default under the Lease beyond any applicable notice and/or cure period (a "Lease Default"), and during the continuation of such Lease Default, Tenant agrees that Lender and/or Landlord shall have the right to inspect the books and records of Tenant relating only to the operation of the Premises, as well as the financial statements of Tenant, at Tenant's office during normal business hours and upon not less than three (3) business days notice. In connection with any such examination by Lender and/or Landlord, Lender and/or Landlord agrees to treat, and to instruct their respective employees, accountants and agents to treat, all information as confidential and not to disclose it to any other person except (i) to Lender and/or Landlord and their respective employees, professionals and consultants on a "need to know" basis, (ii) as may be required by law, and (iii) in connection with any litigation or arbitration under this Agreement or the Lease.

9. Upon the occurrence and during the continuation of a Lease Default, Tenant agrees to permit Lender and/or Landlord and Lender's and/or Landlord's representatives access to, and an opportunity to inspect, the Premises during normal business hours and upon reasonable notice.
10. If Tenant is a corporation, each individual executing this Agreement on behalf of such corporation represents and warrants that such individual is duly authorized to execute and deliver this Agreement on behalf of such corporation, in accordance with a duly adopted resolution of the Board of Directors of such corporation or in accordance with the by-laws of said corporation, and that this Agreement is binding upon such corporation in accordance with its terms. If Tenant is a partnership, each individual executing this Agreement on behalf of said partnership represents and warrants that such individual is duly authorized to execute and deliver this Agreement on behalf of such partnership in accordance with the partnership agreement for such partnership.
11. Landlord hereby agrees that for any and all purposes under the Lease, and notwithstanding anything to the contrary, whenever Landlord's consent or approval is required under the Lease, such consent, approval or action shall be granted, denied or taken by Landlord only, but such consent, approval or action shall be deemed to have been given on behalf of Landlord.
12. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be, at the following addresses:

If to Tenant:

Walgreen Company
200 Wilmot Road, MS# 2252
Deerfield, Illinois 60015-4616
Attention: Law Department

If to Landlord:

WEC 98F-9 LLC
33 North Front Street
Rio Vista, California 94571

with a copy to:

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Weller & Drucker, LLP
Embarcadero Center West
275 Battery Street, 27th Floor
San Francisco, California 94111
Attention: Lou Weller, Esquire

If to Lender:

Legg Mason Real Estate Services, Inc.
15050 N.W. 79th Court, Suite 101
Miami Lakes, Florida 33016

with a copy to:

Ballard Spahr Andrews & Ingersoll, LLP
300 East Lombard Street
Suite 1900
Baltimore, Maryland 21202
Attention: Fred Wolf, III, Esquire

13. The term "Lender" as used herein includes any successors or assigns of the Lender named herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a conveyance in lieu of foreclosure, and their successors and assigns, and the term "Tenant" as used herein includes the Tenant named herein (the "Original Tenant") and any successors or assigns of the Original Tenant.
14. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.
15. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.
16. This Agreement shall be construed in accordance with the laws of the State or Commonwealth in which the Premises are located.

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Loan 2
Chicago, Illinois
SNDA

WITNESS the execution hereof as of the day and year first above written.

LENDER:

PREPARED BY:

Thomas A. Hauser, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
300 E. Lombard Street, 19th Floor
Baltimore, Maryland 21202-3268

LEGG MASON REAL ESTATE
SERVICES, INC., a Pennsylvania corporation

By: *m Pasquarella* (SEAL)
Name: Margaret M. Pasquarella
Title: Vice President

RETURN TO:

Thomas A. Hauser, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
300 E. Lombard Street, 19th Floor
Baltimore, Maryland 21202-3268

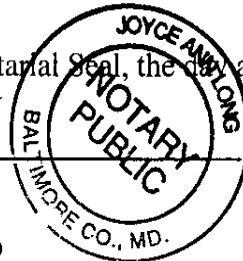
STATE of MARYLAND : CITY of BALTIMORE: TO WIT:

I HEREBY CERTIFY that on this 7th day of December, 1998, before me, a Notary Public for the state and county aforesaid, personally appeared Margaret M. Pasquarella, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that she is the Vice President of LEGG MASON REAL ESTATE SERVICES, INC., a Pennsylvania corporation, that she has been duly authorized to execute, and has executed, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

Joyce Ann Long
Notary Public

JOYCE ANN LONG
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires June 1, 2000



My commission expires on _____

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LANDLORD:

PREPARED BY:

Thomas A. Hauser, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
300 E. Lombard Street, 19th Floor
Baltimore, Maryland 21202-3268

WEC 98F-9 LLC, a Delaware limited
liability company

By:  (SEAL)
Name: Bill D'Amico
Title: President

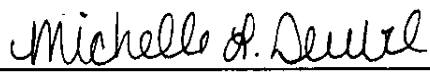
RETURN TO:

Thomas A. Hauser, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
300 E. Lombard Street, 19th Floor
Baltimore, Maryland 21202-3268

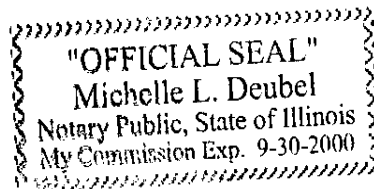
STATE of ILLINOIS: COUNTY of COOK : TO WIT:

I HEREBY CERTIFY that on this 9th day of December, 1998, before me, a Notary Public for the state and county aforesaid, personally appeared Bill D'Amico, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he is the President of WEC 98F-9 LLC, a Delaware limited liability company, that he has been duly authorized to execute, and has executed, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.


Notary Public

My commission expires on 9/30/00.



08142988

TENANT:

PREPARED BY:

Thomas A. Hauser, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
300 E. Lombard Street, 19th Floor
Baltimore, Maryland 21202-3268

BOND DRUG COMPANY OF ILLINOIS,
an Illinois corporation

Pw) By:

[Signature] (SEAL)
Name: ALLAN M. RESNICK

Title: Vice-President

RETURN TO:

Thomas A. Hauser, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
300 E. Lombard Street, 19th Floor
Baltimore, Maryland 21202-3268

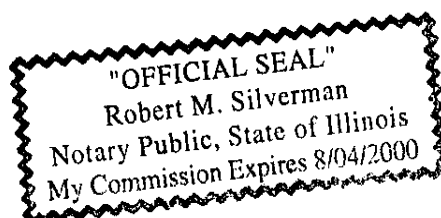
STATE of ILLINOIS : COUNTY of LAKE : TO WIT:

I HEREBY CERTIFY that on this 9th day of December, 1998, before me, a Notary Public for the state and county aforesaid, personally appeared ALLAN M. RESNICK, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that she/he is the VICE-PRESIDENT of BOND DRUG COMPANY OF ILLINOIS, an Illinois corporation, that she/he has been duly authorized to execute, and has executed, the foregoing instrument on behalf of the said entity for the purposes therein set forth, and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

[Signature]
Notary Public

My commission expires on _____

Loan # 2

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EXHIBIT A

08142988

Legal Description

Property of Cook County Clerk's Office

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08142988

LOAN NO. 2
STORE NO. 4152
CHICAGO, IL

EXHIBIT A

Lots 8, 9, 10, 11, and 12 in Block 45 in A. Gale's Subdivision of the Southeast Quarter of Section 31 and the Southwest Quarter of Section 32, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

Tax Parcel No. 13-32-215-029

Premises Address: North Avenue and Mobile Avenue
1606 North Mobile Avenue
Chicago, Illinois

WOLVERINWALGREENITILE4152.EXA

Property of Cook County Clerk's Office