



Doc#: 1200522042 Fee: \$98.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/05/2012 11:29 AM Pg: 1 of 12

3 ALL

8815141 HH (This Space for Recording Use Only)

THIS DOCUMENT SHOULD BE RETURNED TO AFTER REC

WALGREEN CO.
104 Wilmot Road, MS 1420
Deerfield, Illinois 60015
Attn: Lola Muhammad
Real Estate Law Department
Store # 6629

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT made in multiple copies as of the 16 day of November, 2011, by and between WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("Mortgagee"), CHI-WAL INVESTMENTS, L.L.C., an Arizona limited liability company ("Landlord"), and WALGREEN CO., an Illinois corporation ("Tenant");

WITNESSETH: * as document # 1200522041 1/5/2012

WHEREAS, Mortgagee is the holder of a Note in the original principal amount of \$4,300,000.00, secured by a Mortgage or Deed of Trust ("Mortgage") dated December 12, 2011, recorded on _____, 2011, in ~~Book~~ * _____, at Page _____, 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 February 15, 2001, as amended by First Amendment to Lease dated November 16, 2001, Second Amendment to Lease dated November 11, 2003 and Third Amendment to Lease dated December 7, 2006 ("Lease"), recorded by Memorandum of Lease dated February 15, 2001, on September 7, 2001, as Document No. 0010834651,, in the Official Records of Cook County, State of Illinois, Landlord, as landlord, leased to Tenant, as tenant, the property, of the Southeast corner of 87th Street and Cicero Avenue in Hometown, Illinois, legally described on Exhibit "A" ("Leased Premises");

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

UNOFFICIAL COPY

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, in the event of a default under the Note, 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 other procedure related to a default under the Note, 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 other procedure related to a default under the Note 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. In the event that Successor Landlord succeeds to the interest of Landlord under such Lease, Successor Landlord shall not be:

UNOFFICIAL COPY

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 paragraph 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 written consent

6. During the continuance of said Mortgage, Tenant shall use reasonable efforts to give written notice to Mortgagee of all defaults 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 (except as otherwise provided in the next sentence of this paragraph), 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.

7. 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 this paragraph and

UNOFFICIAL COPY

hereby authorizes Tenant to direct all rental and other payments under said Lease as provided by this 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 paragraph.

8. (a) Subject to the terms of (b) below, Tenant agrees that the covenants of Landlord in Article 9 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 9 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 9 of the Lease.

9. 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.

10. 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:

UNOFFICIAL COPY

If to Mortgagee: Wells Fargo Bank, National Association
 1901 Harrison Street, 2nd Floor
 MAC A0227-020
 Oakland, California 94612
 Attention: Commercial Mortgage Servicing

If to Tenant: 104 Wilmot Road, MS 1420
 Deerfield, Illinois 60015

If to Landlord: Chi-Wal Investments, L.L.C.
 2930 N. 7th Street
 Phoenix, Arizona 85014
 Attention: David Dorin

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.

11. 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 Leased Premises. It is the express intention of Landlord and Tenant that the acquisition by either party of the right, title, interest and estate of the other party in and to the Leased Premises shall not result in termination or cancellation of the Lease by operation of the principle of merger of estates or otherwise, notwithstanding any applicable law to the contrary.

12. 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

UNOFFICIAL COPY

signatures and acknowledgements thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

13. 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.

(Signature Page to follow)

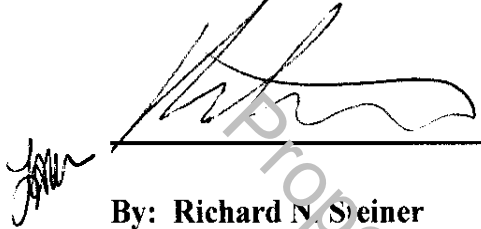
UNOFFICIAL COPY

TENANT:

WALGREEN CO.

MORTGAGEE:

**WELLS FARGO BANK, NATIONAL
ASSOCIATION**



By: Richard N. Steiner

Director, Real Estate Law

By: _____

Title: _____

LANDLORD:

CHI-WAL INVESTMENTS, L.L.C.,
an Arizona limited liability company

By: _____
David Dorin,
Manager

Property of Cook County Clerk's Office

UNOFFICIAL COPY

TENANT:

WALGREEN CO.

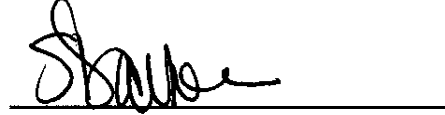


By: **Richard N. Steiner**

Director, Real Estate Law

MORTGAGEE:

WELLS FARGO BANK, NATIONAL ASSOCIATION



By: Stephanie Dalton

Title: Senior Private Bank

LANDLORD:

CHI-WAL INVESTMENTS, L.L.C.,
an Arizona limited liability company



By: David Dorin,
Manager

Store # 6629

7
8

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STREET ADDRESS: 8701 S. CICERO

CITY: HOMETOWN

COUNTY: COOK

TAX NUMBER: 24-03-133-001-0000

24-03-133-019-0000

LEGAL DESCRIPTION:**PARCEL 1:**

THAT PART OF LOTS 1651 AND 1652 AND THE 20-FOOT VACATED ALLEY LYING BETWEEN SAID LOTS IN J.E. MERRION AND COMPANY'S HOMETOWN UNIT NO. 10, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON JUNE 11, 1954 AS LR1528599 DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1652; THENCE NORTH 89 DEGREES, 49 MINUTES, 44 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 1652, A DISTANCE OF 69.67 FEET; THENCE SOUTH 76 DEGREES, 36 MINUTES, 25 SECONDS WEST, A DISTANCE OF 98.07 FEET TO A POINT 165.00 FEET WEST OF AND 23.00 FEET SOUTH OF SAID NORTHEAST CORNER OF LOT 1652, (AS MEASURED ON SAID NORTH LINE AND ON A LINE AT RIGHT ANGLE THERETO), SAID POINT ALSO BEING THE MOST NORTHERLY POINT OF LAND ACQUIRED BY CONDEMNATION IN CIRCUIT COUNTY OF COOK COUNTY PROCEEDINGS NO. 85L50169; THENCE SOUTH 06 DEGREES, 08 MINUTES, 19 SECONDS WEST ALONG THE EAST LINE OF SAID CONDEMNATION, A DISTANCE OF 77.47 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1652, SAID POINT BEING 14.16 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT 1652; THENCE SOUTH 07 DEGREES, 30 MINUTES, 21 SECONDS WEST, A DISTANCE OF 20.17 FEET TO A POINT ON THE NORTH LINE OF AFORESAID LOT 1651, SAID POINT BEING 13.86 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 1651; THENCE SOUTH 06 DEGREES, 54 MINUTES, 01 SECOND WEST, A DISTANCE OF 15.78 FEET; THENCE SOUTH 09 DEGREES, 57 MINUTES, 07 SECONDS WEST, A DISTANCE OF 120.00 FEET TO A POINT ON A CURVE CONVEX TO THE WEST AND HAVING A RADIUS OF 5674.70 FEET; THENCE SOUTHERLY, ALONG SAID CURVE, A CHORD BEARING SOUTH 05 DEGREES, 08 MINUTES, 33 SECONDS WEST, A DISTANCE OF 12.87 FEET, AN ARC DISTANCE OF 12.87 FEET; THENCE SOUTH 89 DEGREES, 59 MINUTES, 37 SECONDS EAST, A DISTANCE OF 125.13 FEET; THENCE SOUTH 44 DEGREES, 51 MINUTES, 08 SECONDS EAST, A DISTANCE OF 45.05 FEET; THENCE SOUTH 89 DEGREES, 59 MINUTES, 37 SECONDS EAST, A DISTANCE OF 42.84 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1651, SAID POINT BEING 178.16 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT 1651; THENCE NORTH 00 DEGREE, 00 MINUTE, 23 SECONDS EAST ALONG THE EAST LINES OF AFORESAID LOTS 1651 AND 1652 AND AFORESAID 20-FOOT ALLEY, A DISTANCE OF 298.16 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INGRESS, EGRESS AND PARKING AS RESERVED IN RECIPROCAL EASEMENT AGREEMENT RECORDED NOVEMBER 25, 2003 AS DOCUMENT 0332908314 AS AMENDED BY FIRST AMENDMENT TO RECIPROCAL AGREEMENT RECORDED DECEMBER 28, 2006 AS DOCUMENT 0636241087.

9

UNOFFICIAL COPY

ACKNOWLEDGEMENT

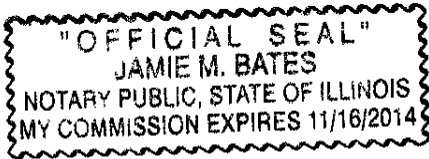
STATE OF ILLINOIS §
 §
COUNTY OF LAKE §

On this 21st day of NOVEMBER 2011, before me appeared **Richard N. Steiner**, to me personally known, who, being by me duly sworn, did say that he is the **Director, Real Estate Law 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 **Director, Real Estate Law** acknowledged said instrument to be the free act and deed of said corporation.

(Seal)

Jamie M Bates
Notary Public

My term expires:



PROPERTY OF COOK COUNTY CLERK'S OFFICE

UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF CALIFORNIA }
 } ss.
 COUNTY OF LOS ANGELES }

On this 22nd day of December, 2011, the undersigned, a Notary Public in and for the said County and State, hereby certifies that before me personally appeared, _____, known to me or proved to me on the basis of satisfactory evidence, to be the Senior Private Banker of Wells Fargo Bank NA, who, having been duly authorized, executed the foregoing instrument as signed: D agreement on behalf of said Private Banker and acknowledged the due execution of the said instrument to be the free and voluntary act and deed of said Corporation for the uses and purposes therein stated.

Witness my hand and Notarial Seal.



[Signature] (SEAL)
 Print Name: Marca Bucholz
 County of Los Angeles
 State of California
 My Commission Expires: 8/8/14

UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF California }
COUNTY OF Los Angeles } ss.

On this 21 day of December, 2011, the undersigned, a Notary Public in and for the said County and State, hereby certifies that before me personally appeared, David Dorn known to me or proved to me on the basis of satisfactory evidence, to be the Manager of Chival Investments, who, having been duly authorized, executed the foregoing instrument as SNDA Agreement LLC on behalf of said LLC and acknowledged the due execution of the said instrument to be the free and voluntary act and deed of said LLC for the uses and purposes therein stated.

Witness my hand and Notarial Seal.



[Signature] (SEAL)
Print Name: Christian Corado
County of: Los Angeles
State of: California
My Commission Expires: May 25th, 2013.