



Doc#: 1203731030 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 02/06/2012 12:14 PM Pg: 1 of 9

This Agreement was Prepared
by and upon recording should be
returned to:

Timm & Garfinkel, LLC
770 Lake Cook Road, Suite 150
Deerfield, IL 60015
Attention: Glenn Garfinkel

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

THIS AGREEMENT ("Agreement"), made as of the 27th day of May, 2011, between FOG 225 LOAN, LLC, an Illinois limited liability company, having an office at 6040 Winterthur Drive, Atlanta, GA 30328 (hereinafter called "Mortgagee") and WAL-MART STORES, INC., a Delaware corporation, having an office at 2001 S. E. 10th Street, Bentonville, AR 72716-0550 (hereinafter called "Tenant").

WITNESSETH

WHEREAS, Mortgagee is the holder of a mortgage (hereinafter called the "Mortgage") covering a parcel of land owned by Fog 225, LLC, an Illinois limited liability company (hereinafter called "Landlord") legally described on Exhibit "A" annexed hereto and made a part hereof, together with the improvements erected thereon (said parcel of land and improvements thereon being hereinafter called the "Premises"); and

WHEREAS, by a certain lease heretofore entered into between Landlord and Tenant dated as of May 27, 2011 (hereinafter called the "Lease"), Landlord leased to Tenant the Premises; and

WHEREAS, a copy of the Lease has been delivered to Mortgagee, the receipt of which is hereby acknowledged; and

WHEREAS, as an inducement to Tenant to enter into the Lease, Article 17 thereof provides that the Lease is conditioned upon Landlord obtaining this Agreement from Mortgagee;

WHEREAS, the parties desire to satisfy the foregoing condition and to provide for the non-disturbance of Tenant by the holder of the Mortgage;

S yes
P 9
S No
M No
SC yes
E yes
INT H

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NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto intending to be legally bound hereby agree as follows:

1. Mortgagee hereby consents to the Lease and the term thereof, including the options to extend the term as set forth in the Lease, and covenants and agrees that the exercise by Tenant of any of the rights, remedies and options therein contained shall not constitute a default under the Mortgage.

2. Tenant covenants and agrees with Mortgagee that the Lease hereby is made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage, and to all modifications and extensions thereof, subject, however, to the provisions of this Agreement.

3. Tenant certifies that the Lease is presently in full force and effect and unmodified.

4. Mortgagee agrees that so long as the Lease shall be in full force and effect and Tenant is not in default beyond any applicable notice and cure period:

(a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby, except to the extent required by applicable law;

(b) The possession by Tenant of the Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise affected by (i) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Premises, or any deed given in lieu of foreclosure, or by the exercise of any other rights given to any holder of the Mortgage or other documents as a matter of law, or (ii) any default under the Mortgage or the bond or note or other obligation secured thereby;

(c) All condemnation awards and insurance proceeds paid or payable with respect to the Premises and received by Mortgagee shall be applied and paid in the manner set forth in the Lease; and

(d) Neither the Mortgage nor any other security instrument executed in connection therewith shall cover or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed by or for Tenant or its subtenants or licensees on the aforementioned property regardless of the manner or mode of attachment thereof.

5. If Mortgagee or any future holder of the Mortgage shall become the owner of the Premises by reason of foreclosure of the Mortgage or otherwise, or if the Premises shall be sold as a result of any action or proceeding to foreclose the Mortgage, or transfer

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of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the then owner of the Premises, as "landlord", upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the renewal periods, if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease;

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the renewal periods, if Tenant elects or has elected to exercise its options to extend the term) which such new owner hereby agrees to assume and perform and Tenant shall, from and after the date such new owner succeeds to the interest of "landlord" under the Lease, have the same remedies against such new owner for the breach of any covenant contained in the Lease that Tenant might have had under the Lease against Landlord if such new owner had not succeeded to the interest of "landlord", provided, however, that such new owner shall not (i) be bound by any rent or additional rent which Tenant might have paid for more than one (1) month in advance to any prior landlord (including Landlord); or (ii) be bound by any amendment or modification of the Lease made without its consent which would (x) reduce fixed annual rent, or (y) reduce any other monetary obligation of Tenant under the Lease;

(c) Tenant agrees to promptly give Mortgagee a copy of any notice of default served on Landlord in the event of a default by Landlord in the obligations of Landlord under the Lease. Tenant further agrees to give such notice to Mortgagee's successor-in-interest in said Mortgage, provided that prior to any such default of Landlord, such successor in interest shall have given written notice to Tenant of its acquisition of Mortgagee's interest therein, and designated the address to which notice is to be directed. Tenant shall not be liable in any way to Mortgagee or Mortgagee's successor-in-interest in said Mortgage, for monetary damages or otherwise, for the failure to send Mortgagee a copy of such notice. Mortgagee has the right to cure any such default of Landlord, and for such purpose Tenant hereby grants Mortgagee such additional period of time as may be reasonable to enable Mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default; provided, however, that Mortgagee shall not be obligated to specifically perform any such cure, in which case, Tenant shall have all of its remedies against Landlord under the Lease available. No Landlord default under the Lease shall exist or shall be deemed to exist (i) as long as Mortgagee, 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 and continuity until completion, 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 Mortgagee, as long as Mortgagee, in good faith, shall have notified Tenant that Mortgagee intends to institute proceedings under the Mortgage, and,

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thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event neither Landlord nor Mortgagee cure any breach or default by Landlord, the time periods for the exercise of any remedies available to Tenant under the Lease shall be deemed to have commenced on the earlier of (i) Mortgagee's notice to Tenant that it declines to cure such default, or (ii) the expiration of any grace or cure period for Landlord under the Lease; and

(d) Mortgagee shall not be subject to any offsets or deficiencies which Tenant may be entitled to assert against the Landlord as a result of any act or omission of Landlord occurring prior to Mortgagee's obtaining title to the Premises, it being understood that nothing in this clause shall be deemed to exclude Mortgagee from responsibility for repairs and maintenance required of the Landlord under the Lease from and after the date Mortgagee takes title to the Premises, whether or not the need for such repairs or maintenance accrued before or after such date; provided, however, that in no event shall Mortgagee be responsible for consequential damages resulting from the failure of Landlord to undertake such repairs and maintenance.

6. (a) Any notices, demands, reports or communications required, desired or permitted to be given under this Agreement ("Notices") shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless same shall be given by registered or certified mail, return receipt requested, postage prepaid, or by any recognized overnight mail carrier, with proof of delivery slip, (y) if to Mortgagee, at the address of Mortgagee as hereinabove set forth or at such other address as Mortgagee may designate by Notice, or (z) if to Tenant, then in duplicate, under separate cover, one copy to the attention of the Real Estate Manager – Northern Illinois, and one copy to the attention of the Real Estate Law Department – Northern Illinois, at the address of Tenant as hereinabove set forth or at such other address as Tenant may designate by Notice. During the period of any postal strike or other interference with the mail, personal delivery (with proof of delivery slip or sworn affidavit of service) shall be substituted for registered or certified mail. No default Notice given by Tenant under the Lease shall be effective as against Mortgagee unless a duplicate copy thereof has been given to Mortgagee.

(b) Any Notice hereunder shall be deemed to have been given or served for all purposes on the date of delivery or refusal thereof.

(c) Notwithstanding anything herein to the contrary, neither party may designate any address for delivery of Notices unless same shall include a (i) street address, (ii) building name and/or number, (iii) street designation, (iv) city, (v) state, and (vi) zip code.

7. This Agreement shall bind and inure to the benefit of and be binding upon and enforceable by the parties hereto and their respective successors and assigns.

8. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or cancelled except by an agreement in writing

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executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

9. This Agreement and the covenants herein contained are intended to run with and bind all lands affected thereby.

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

Attest: FOG 225 LOAN, LLC, an Illinois limited liability company

By: _____ By: _____

Name:

Title:

[Corporate Seal]

(Mortgagee)

Attest:

WAL-MART STORES, INC., a Delaware corporation

By: Bruce E. Nebl

Assistant Secretary

By: Brian Hooper

Name: Brian Hooper

Title: Vice President of Real Estate

[Corporate Seal]

(Tenant)



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executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

9. This Agreement and the covenants herein contained are intended to run with and bind all lands affected thereby.

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

Attest: FOG 225 LOAN, LLC, an Illinois limited liability company

By:  _____ By:  _____

Name: MARK D. HACIENDA

Title: MANAGER

[Corporate Seal] (Mortgagee)

Attest: WAL MART STORES, INC., a Delaware corporation

By: _____ By: _____

Name: Brian Hooper

Title: Vice President of Real Estate

[Corporate Seal] (Tenant)

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STATE OF _____)
)
) ss.
COUNTY OF _____)

On this the ____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of _____, a _____ corporation, and that he, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by himself as _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

Notary Public

STATE OF ARKANSAS)
)
) ss.
COUNTY OF BENTON)

On this the 17 day of march, 2011, before me, the undersigned notary, personally appeared Brian Hooper, who acknowledged himself to be the Vice President of Real Estate of Wal-Mart Stores, Inc., a Delaware corporation, and that he, as such Vice President of Real Estate, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by himself as Vice President of Real Estate.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

Lisa M Garcia

Notary Public

LISA M. GARCIA
NOTARY PUBLIC-STATE OF ARKANSAS
WASHINGTON COUNTY
My Commission Expires May 01, 2017
Commission # 12360574

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STATE OF GEORGIA)
)
COUNTY OF DEKALB) ss.

On this the 27th day of May, 2011, before me, the undersigned officer, personally appeared MARK W. HOOPER, who acknowledged himself to be the manager of CVS PHARMACY, LLC, a GA corporation, and that he, as such manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by himself as manager.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]



Simon L. Engler
Notary Public

STATE OF ARKANSAS)
)
COUNTY OF BENTON) ss.

On this the _____ day of _____, 2011, before me the undersigned notary, personally appeared Brian Hooper, who acknowledged himself to be the vice President of Real Estate of Wal-Mart Stores, Inc., a Delaware corporation, and that he, as such vice President of Real Estate, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by himself as Vice President of Real Estate.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

Notary Public

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EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

THE SOUTH 50 FEET OF THE WEST 15 FEET OF LOT 15 AND ALL OF LOTS 16, 17, 18, 19, AND 20 IN BLOCK 18 IN NEWBERRY'S ADDITION TO CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 225 W. CHICAGO AVENUE, CHICAGO, ILLINOIS

PINS: 17-09-202-001-0000
17-09-202-002-0000
17-09-202-003-0000