

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made and entered into as of this 30 day of November, 1990 by and among ABP MIDWEST, INC., a Wisconsin corporation duly authorized to transact business in the State of Illinois (the "Tenant"), NEW WEST FEDERAL SAVINGS & LOAN ASSOCIATION (the "Lender"), and CHICAGO TITLE & TRUST COMPANY, solely as Trustee under Trust Number 63493 (the "Landlord").

91090029

WITNESSETH:

RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS FOR COOK COUNTY, ILLINOIS, ON NOVEMBER 30, 1990, AT 10:00 AM. DOCUMENT NUMBER 91090029.

WHEREAS, Landlord has entered into a certain lease (the "Lease") with Tenant dated November 30, 1990. The Lease covers the premises (the "Premises") being ground floor retail space containing 4,150 rentable square feet of the building commonly known as the 200 West Adams Street Building, Chicago Illinois 60606, which is part of the real property (the "Property") described in Exhibit A attached hereto.

WHEREAS, Landlord executed a certain mortgage and assignment of rents and security agreement (the "Original Mortgage") for the benefit of FCA Mortgage Company ("FCA") encumbering the Property for the purpose of securing a loan (the "Original Loan") by Lender to Landlord, which Original Mortgage was recorded in the office of the Recorder of Deeds for Cook County, Illinois, as Document Number 27148203;

WHEREAS, Landlord executed a certain mortgage and assignment of rents and security agreement (the "Restated Mortgage") dated as of June 1, 1988, in favor of FCA encumbering the Property for the purpose of increasing the Original Loan and securing a loan (the "Loan"), which Restated Mortgage was recorded in the office of the Recorder of Deeds for Cook County, Illinois, as Document Number 89177460;

WHEREAS, the Original Mortgage, the Restated Mortgage and other documents executed as further security for or in connection with the Original Loan and the Loan (the "Mortgage") were assigned from FCA to Lender pursuant to an assignment of mortgage and ancillary documents dated June 28, 1989 and recorded in the office of the Recorder of Deeds for Cook County, Illinois on July 20, 1989, as Document Number 89332382.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant, Landlord and Lender hereby agree as follows:

1. Subordination. The Lease and all of Tenant's right, title and interest in and to the Property thereunder shall be, and hereby are, expressly made subject and subordinate to the Mortgage, and the Lien thereof, as to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewal, substitution, extension, modification or replacement thereof, including any increase therein or supplements thereto, so that at all times the Mortgage shall be and remain a lien on the Premises prior to and superior to the Lease for all purposes, subject to the provisions set forth herein.

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2. Attornment. In the event of a transfer of Landlord's interest in the Property as a result of a foreclosure of the Mortgage, by a deed in lieu of foreclosure or by any other exercise of Lender's rights ("Foreclosure") under the Mortgage for any reason whatsoever, Tenant shall attorn to and accept the person or entity, including Lender, who acquires Landlord's interest in the Premises ("Purchaser") as lessor under the Lease for the then remaining balance of the term thereof, subject to all of the terms and conditions of the Lease. Upon the written request of a Purchaser, Tenant shall enter into a new lease (the "New Lease") of the Premises with such Purchaser for the then remaining term of the Lease, upon the same terms and conditions as contained in the Lease.

3. Non Disturbance. In the event of a Foreclosure of the Mortgage for any reason whatsoever, Lender or Purchaser shall accept the attornment of the Tenant and shall recognize and accept Tenant as lessee of the Premises under the terms and conditions of the Lease or, if such Purchaser so elects, the New Lease. The obligation of Lender or Purchaser to accept the attornment of Tenant and not to disturb Tenant's possession of the Premises under the Lease, as set forth in this Paragraph 3, is expressly subject to the satisfaction of all of the following conditions at the time of Foreclosure:

(a) Tenant shall not then be in default in the performance of any of Tenant's obligations under the Lease beyond the period for cure thereof set forth in the Lease;

(b) Neither the rent nor any other charge or expenses payable by Tenant under the Lease shall have been reduced in any way, except as provided in the Lease, without Lender's prior written consent;

(c) The Lease shall not have been otherwise modified or supplemented in any way without Lender's prior written consent;

(d) Tenant shall pay to Lender or Purchaser all rental and other payments payable to Landlord under the Lease from and after the earlier of the date of the Foreclosure or the date of Tenant's receipt of written notice from Lender or Purchaser in the amounts and at the times set forth in the Lease, notwithstanding any prepayment of rent theretofore made by Tenant to Landlord and not credited to Lender or Purchaser for any period more than one month in advance;

(e) Tenant shall duly confirm its attornment to Purchaser by an appropriate written instrument if required by Purchaser;

(f) Purchaser shall not be liable under any, if any, warranty of construction contained in the Lease;

(g) Tenant shall have performed all of its covenants contained herein; and

(h) All representations made by Tenant shall be true and correct as of the date of such attornment.

Neither Lender nor Purchaser shall (i) be liable for damages arising from any act or omission or defaults of Landlord under the Lease, or (ii) be subject to any claims, offsets or defenses which Tenant may be entitled to assert against Landlord prior to the time Lender or Purchaser succeeds to the position of Landlord under the Lease at Foreclosure. Landlord and Lender hereby covenant and agree that any and all payments made by Tenant to Lender pursuant to Subparagraph 3(d) shall constitute legally effective payment and performance by Tenant of such obligation for all purposes under the Lease and Tenant is authorized and directed to make such rent and other payments as requested by such notice without any obligation or duty to inquire into either (i) the validity or accuracy of the notice from Lender or Purchaser or (ii) the application of any moneys paid to Lender or Purchaser.

4. Notice and Cure. Tenant shall promptly deliver to Lender, at the address set forth in Paragraph 13 below, a copy of any notice of default ("Notice") which Tenant serves upon Landlord resulting from Landlord's default in the performance of Landlord's obligations under the Lease, if such default would entitle Tenant to terminate the Lease, reduce the rent payable thereunder or credit or offset any amounts against future rents payable thereunder. Tenant agrees that, notwithstanding any provision of the Lease, no Notice shall be effective to cancel the Lease or to entitle Tenant to an abatement or offset against rents payable if Lender has received the Notice and (i) within thirty (30) days after Lender's receipt of the Notice, Lender has cured such default, or (ii) is such default cannot reasonably be cured within such thirty (30) days, Lender has commenced cure within such thirty (30) day period and such cure is thereafter diligently prosecuted to completion. Tenant shall also give a copy of such Notice to any successor to Lender's interest under the Mortgage, provided that Lender or such successor notifies Tenant of the name and address of the party Tenant is to notify.

Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's other obligations under the Lease. Unless Lender otherwise agrees in writing, Landlord shall remain solely liable to perform Landlord's obligations under the Lease, before Lender's exercise of any right or remedy under this Agreement. If any Purchaser becomes obligated to perform as lessor under the Lease, such Purchaser will be released from those obligations when such Purchaser assigns, sells or otherwise transfers its interest in the Premises or the Property.

5. Estoppel Certificate. Tenant and Landlord each respectively hereby represent to Lender as of the date hereof and agree as follows:

(a) Lease Effective. The Lease is in full force and effect and has not been modified, supplemented, amended, altered or superseded in any way, except as specifically described hereunder, and all condition to the effectiveness or continuing effectiveness thereof required to be satisfied by the date hereof have been satisfied. No cancellation, other than a cancellation permitted under the Lease, modification or amendment of the Lease which would

adversely affect the Lender shall be effective without the prior written consent of Lender which consent shall not be unreasonably withheld.

(b) No Default. To the best of their knowledge, Landlord and Tenant have fulfilled each of those duties of an inducement nature which are capable of being fulfilled as of the date hereof and neither Landlord nor Tenant is in default in any respect under any of the provisions of the Lease.

(c) No Prepaid or Reduced Rent. Tenant has not prepaid and will not prepay any rent under the Lease in excess of one (1) month's rent and has not and will not reduce the rent under the Lease, except as may be permitted under the Lease, and any such prepayment and any such reduction shall be ineffective without the prior written consent of the Lender.

(d) No Offset. Tenant has no defenses or counterclaims to Lease obligations which have accrued under the Lease prior to the date hereof or against the enforcement of the Lease by the Landlord and, except as expressly provided in the Lease, Tenant has no right or offset against rentals or other Lease obligations.

(e) Option, Refusal. The Lease contains no option or right of first refusal to purchase any property including the Premises or any interest therein.

(f) Security Deposit. No security deposit has been paid.

(g) Assignment. Tenant and Landlord each have no notice of any other assignment, hypothecation or pledge of rents of the Lease or of any sublease of the Lease.

(h) Insurance. Tenant shall cause Lender to be named as an insured, as its interest may appear, by standard mortgage clause with cross-liability and severability of interest endorsements if applicable, under all policies of insurance required to be maintained by Tenant under the Lease, which policies of insurance will specifically provide for non-cancellation and no material modification without 30 days' prior written notice to Lender, and shall promptly provide Lender with a certificate evidencing same.

(i) Authority. Landlord represents that the Lease was duly executed by Landlord and all consents, resolutions or other approvals required for Landlord to execute the Lease were obtained. Tenant represents that the Lease was duly executed by Tenant and all consents, resolutions or other approvals required for Tenant to execute the Lease were obtained.

(j) Further Subordination. Tenant and Landlord shall provide a document of subordination, non-disturbance and attornment to any lender making a loan secured by the property including the Premises the proceeds of which loan are used to repay the Loan in whole or in part.

6. Further Assurances. The foregoing provisions shall be self-operative, provided, however, each party hereto agrees to execute and deliver to the party so requesting (and if Lender is the requesting party or to any person to whom Tenant herein agrees to attorn) such instruments as such requesting party shall reasonably request in order to effectuate said provisions, in form and substance reasonably acceptable to the requesting party.

7. Successors and Assigns. The covenant and agreements herein contained shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.

9. Remedies Cumulative. All remedies of Lender against Landlord provided herein are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Landlord or others. If any party consists of multiple individuals or entities, each of same shall be jointly and severally liable for the obligations of such party hereunder.

10. Attorney Fees. The reasonable cost of attorneys' fees for any legal action or arbitration between or among the parties arising out of any dispute or litigation relating to enforcement of this Agreement shall be borne by the party(s) against whom a final decision is rendered.

11. Exhibits. All exhibits attached are incorporated herein by reference as though fully set forth in this Agreement.

12. Paragraph Headings. Paragraph headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.

13. Notices. All notices to be given under this Agreement shall be in writing and shall be deemed served upon receipt by the addressee if served personally or, if mailed, upon the first to occur of receipt or the refusal of delivery as shown on a return receipt, after deposit in the United States Postal Service certified mail, postage prepaid, addressed to the address of Landlord, Tenant or Lender appearing below, or, if sent by telegram, when delivered by or refused upon attempted delivery by the telegraph office. Such addresses may be changed by notice given in the same manner. If any party consists of multiple individuals or entities, then notice to any one of same shall be deemed notice to such party.

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Lender's Address:

New West Federal Savings and Loan Association  
445 San Joaquin Street  
Stockton, California 95202  
Attn: Garry L. Norris  
Loan No. 09147216

With a copy to:

Cadwalader, Wickersham & Taft  
100 Maiden Lane  
New York, New York 10038  
Att: W. Christopher White, Esq.

Tenant's Address:

ABP MIDWEST, INC.  
601 Atlas Avenue  
Madison, Wisconsin 53707  
Att: Ramon Steck, President

Landlord's Address:

Chicago Title And Trust Company, Tr. 63493  
c/o Equitec Tower, Ltd  
200 West Adams Street  
Suite 1811  
Chicago, Illinois 60606

All Notices to Lender shall include a reference to loan No. 09147216.

14. Applicable Law and Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Illinois.

15. Exoneration. This Agreement is executed by the CHICAGO TITLE AND TRUST COMPANY, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as Trustee, and under the express direction of the beneficiaries of the said Trust. It is expressly understood and agreed that nothing herein shall be construed as creating any liability whatsoever against said Trustee personally, and in particular, without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, or to keep, preserve, or sequester any property of said Trust, and that all personal liability of said Trustee of every sort if any, is hereby expressly waived by said

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Tenant and by every person now or hereafter claiming any right or security hereunder; and that so far as the said Trustee is concerned the owner of any indebtedness or liability accruing hereunder, shall look solely to the assets of said Trust and the proceeds thereof for the payment thereof.

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

"Lender"

NEW WEST FEDERAL SAVINGS  
AND LOAN ASSOCIATION, as Lender:

By: *Gary L. Norris*  
Name: GARY L. NORRIS  
Title: VICE PRESIDENT

ATTEST:

By: \_\_\_\_\_

Name:

Title:

"Tenant"

"Tenant"

ABP MIDWEST INC., a Wisconsin  
corporation duly authorized to transact  
business in the State of Illinois

By: *Ramon L. Steuk*  
Name: Ramon L. Steuk  
Title: President

ATTEST:

By: *Steven R. Murphy*

Name: Steven R. Murphy

Title: Sec.

"Landlord"

CHICAGO TITLE AND TRUST COMPANY, solely and only as Trustee under Trust  
Agreement known as Trust No. 63495

By: *Dorothy Catalano*  
Name: DOROTHY CATALANO  
Title: ASST. VICE PRESIDENT

ATTEST:

By: *Karen Michel*  
Name: KAREN MICHEL  
Title: Asst. Secretary

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STATE OF Wisconsin )

) SS.

COUNTY OF Dane )

I, James L. Steck, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James L. Steck personally known to me to be the President of ABP MIDWEST, INC., a Wisconsin corporation authorized to do business as a foreign corporation within the State of Illinois, and Jason R. Murphy personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument as President and Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 10<sup>th</sup> day of Dec, 1990.

James L. Steck  
Notary Public

My commission expires: \_\_\_\_\_, 19  .

Notary Public Dane County Wisconsin  
My Commission Expires April 18, 1993

STATE OF CALIFORNIA )

) SS.

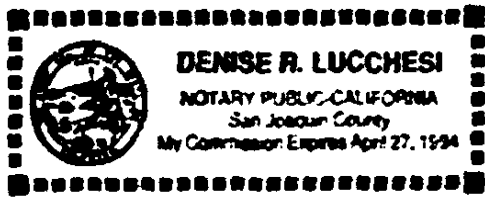
COUNTY OF San Joaquin )

I, Denise R. Lucchesi, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gregory A. Adams personally known to me to be the President of NEW WEST FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation, and Gregory A. Adams personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument as President and Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 17 day of January, 1991.

Denise R. Lucchesi  
Notary Public

My commission expires: April 27, 1994



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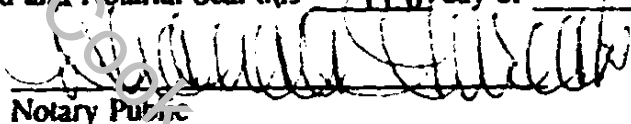


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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, THE UNDERSIGNED, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DOROTHY CATALANO, <sup>Asst. Secy</sup> President of CHICAGO TITLE AND TRUST COMPANY, personally known to me to be acting not personally but as Trustee under a certain Trust Agreement dated December 7, 1978 and known as Trust Number 63493 and KAREN MICHEL, <sup>Asst.</sup> Secretary of said Trust Company, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such <sup>Asst. Secy</sup> President and <sup>Asst.</sup> Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Trust Company, as Trustee aforesaid, for the uses and purposes therein set forth; and said <sup>Asst.</sup> Secretary then and there acknowledged that he, as custodian of the corporate seal of said Trust Company, did affix the corporate seal of said Trust Company to said instrument as his own free and voluntary act and as the free and voluntary act of said Trust Company, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this FEB. 05 day of 1991, 19\_\_.



Notary Public  
My commission expires: \_\_\_\_\_ 19\_\_.



County Clerk's Office

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## EXHIBIT A

### Legal Description

#### PARCEL 1:

Sub-Lots 3, 4, and 5 in Field and Perkin's Subdivision of Lots 5, 6 and 7 and part of Lot B lying East of the East line of Franklin Street in block 93 in School Section Addition in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

AREA = 23736.2 SQ. FT. OR 0.5449 ACRES

#### PARCEL 2:

The South 22 feet 10 inches of Lot 9 in Bolles Subdivision of Lot 4 in Block 93 in School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

AREA = 2071.7 SQ. FT. OR 0.476 ACRES

#### PARCEL 3:

That part of the private court lying North of and adjoining Lot 3 in Field and Perkin's Subdivision of Lots 5, 6, and 7 and that part of Lot 8 lying East of the East line of Franklin Street in Block 93 in School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, lying South of and adjoining that portion of the vacated public alley as vacated by Ordinance of the City council of the City of Chicago approved April 13, 1984 and recorded May 4, 1984 as Document No. 27072384, in Cook County, Illinois.

AREA = 927.2 SQ. FT. OR 0.0213 ACRES

#### PARCEL 4:

All that vacated part of the East-West 20 foot public alley lying South of the South line of Lot 3 in Block 93 in School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian lying South of the South line of Lot 9 in Subdivision of Lot 4 in Block 93 in School Section Addition aforementioned; lying West of the West line of Lot 5 in Field and Perkin's Subdivision of Lots 5, 6, 7 and that part of Lot 8 lying East of the East line of South Franklin Street all in Block 93 in School Section Addition aforementioned; lying South of the South line of Lot 5 in Field and Perkin's Subdivision aforementioned; lying West of the West line of Lot 4 in Field and Perkin's Subdivision aforementioned; lying North of the North line of the East-West private court North of and adjoining Lots 2 and 3 in Field and Perkin's Subdivision aforementioned; and lying East of the Northwardly extension of the West line of Lot 3 in Field and Perkin's Subdivision aforementioned; said vacated part of the public alley being further described as the East 48 feet, more or less, of the East-West 20 foot public alley

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in the block bounded by West Monroe Street, West Adams Street, South Franklin Street, and South Wells Street.

AREA = 2849.02 SQ. FT. OR 0.065 ACRES

## PARCEL 5:

Easement for passageway for the benefit of Parcel 1 as created by decree entered January 31, 1908, in Case No. 208855, Superior Court of Cook County, Illinois over the North 20 feet of Lot 1 in Perkin's and Field's Subdivision of Lots 5, 6, and 7 and part of Lot 8 in Block 93 in School Section Addition aforesaid and over the North 20 feet of that part of the private alley lying East of the adjoining said Lot 1 in Perkin's and Field's Subdivision aforesaid.

AREA = 923.01 SQ. FT. OR 0.0212 ACRES

## Parcel 6:

The South 22 feet 10 inches of that part of original Lot 4 lying West of the West line of the Subdivision of original Lot 4 and East of the line of original Lot 3 (said East line of Lot 3 being also the East line of the 10 foot private alley) in Block 93 in School Section Addition to Chicago in Section 16 Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

KNOWN AS 200 W. ADAMS ST. CHICAGO, ILLINOIS

Common Street Address: 200 West Adams Street  
Chicago, Illinois 60606

Permanent Tax Numbers: 17-16-209-007  
17-16-209-009  
17-16-209-010  
17-16-209-011

This Document Was Prepared By:  
D. E. Malfar & Associates  
Counselors At Law  
77 West Washington Street  
Suite 619  
Chicago, Illinois

## WHEN RECORDED MAIL TO:

ARP MIDWEST  
601 Atlas Avenue  
Madison, Wisconsin 53716  
Attn: Vicki Fenrite or Ramon L. Steck  
Loan No. \_\_\_\_\_

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