



98913713

2270/0013 30 001 Page 1 of 12
1998-10-13 09:07:01
Cook County Recorder 43.00

When Recorded Mail To:
Daniel J. Favero, Esq.
Chapman and Cutler
111 West Monroe
Chicago, Illinois 60603

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE ONLY

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

dated as of
September 1, 1998

Among

BOND DRUG COMPANY OF ILLINOIS

(the "Tenant")

and

WILLOW, L.L.C.

(the "Landlord")

and

PHOENIX HOME LIFE MUTUAL INSURANCE COMPANY

(the "Mortgagee")

of 775718-1 5 of 5

12

Walgreens Retail Outlet
(NEC Willow Road and Old Willow Road,
City of Northfield, Cook County, Illinois)

DIN # 04-24-219-041

BOX 333-CTI

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

This Agreement is made and entered into as of September 1, 1998, by and among Bond Drug Company of Illinois, an Illinois corporation (hereinafter referred to as "*Tenant*"), with a mailing address of 200 Wilmot Road, Deerfield, Illinois 60015, and Willow, L.L.C., an Illinois limited liability company with a mailing address of c/o Centrum Properties Inc., 225 West Hubbard Street, Chicago, Illinois 60610-4416 (hereinafter referred to as "*Landlord*"), and Phoenix Home Life Mutual Insurance Company, Landlord's mortgagee (hereinafter referred to as "*Mortgagee*").

WITNESSETH:

WHEREAS, *Tenant* and *Landlord* are parties to a lease dated May 24, 1996, whereby *Landlord's* predecessor-in-interest has demised to *Tenant* the premises described in said lease, which are hereinafter referred to as the "*Leased Premises*" located on certain real estate legally described in Exhibit "A" attached hereto and made a part hereof (the "*real estate*"); said lease together with any amendments or modifications thereof, whether now or hereafter existing, shall be hereinafter referred to as the "*Lease*"; and

WHEREAS, *Landlord* has executed and delivered to *Mortgagee* the Mortgage and Security Agreement dated as of September 1, 1998 and the Assignment of Lease dated as of September 1, 1998, both recorded simultaneously herewith in the Recorder's Office of Cook County, Illinois, together with related security documents (collectively, the "*Mortgage*") encumbering the real estate to secure an indebtedness of [\$4,324,000]; and

WHEREAS, *Mortgagee*, as a condition to making the loan secured by the *Mortgage*, has requested the execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and in consideration of One Dollar (\$1.00) by each of the parties hereto paid to the other, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

1. The *Lease* is and shall continue to be subject and subordinate to the *Mortgage* and to all renewals, modifications, consolidations, replacements, and extensions thereof, to the full extent of the principal sum secured thereby and interest accrued and from time to time unpaid thereon, subject to the terms of this Agreement.

2. So long as *Tenant* is not in default as defined in said *Lease* in the payment of rent, additional rent or other charges or conditions of the *Lease*, *Tenant* shall not be disturbed by *Mortgagee* in *Tenant's* possession, enjoyment, use and occupancy of the *Leased Premises* during the original or any renewal term of the *Lease* or any extension or modification thereof, and *Mortgagee* agrees to be bound by the *Lease* and all of the terms and conditions thereof. In the event of a conflict between the provisions of the *Lease* and the *Mortgage*, the terms of the *Lease* shall prevail.

3. Tenant agrees that upon receipt of written notice from Mortgagee all rentals and other sums payable by Tenant under the Lease shall be delivered to and drawn to the exclusive order of Mortgagee until Mortgagee or a court of competent jurisdiction directs otherwise. Such an assignment of rents 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, Tenant's rights of offset or deduction. Landlord specifically consents to this paragraph 3. Landlord relieves Tenant of all liability for the payment of any sums as required under this paragraph 3. Tenant may rely on Mortgagee's notice under this paragraph 3 regardless of any conflicting or contrary demands by Landlord.

(a) Tenant shall give prompt written notice to Mortgagee of all defaults by Landlord of those obligations under the Lease which are of such a nature as to give Tenant a right to terminate the Lease, to 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. Tenant's failure to so provide a notice to Mortgagee hereunder shall not be a default of this Agreement or the Lease, except that Mortgagee shall not be bound by defaults, offsets or deductions that it has not been notified of (as more fully set forth in paragraph 6 below).

(b) All notices under this Agreement shall be in writing and if addressed to Tenant, to 200 Wilmot Road, Deerfield, Illinois, 60015, Attention Law Department, and if addressed to Mortgagee, to:

Phoenix Home Life Mutual Insurance Company
c/o Phoenix Duff & Phelps, Inc.
56 Prospect Street
Hartford, Connecticut 06115-0480
Attention: Private Placements Division

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.

5. In the event it should become necessary to foreclose the Mortgage, the Mortgagee thereunder will not join the Tenant as a party defendant in any foreclosure proceedings so long as the Tenant is not in default under any of the terms, covenants or conditions of the Lease (except to the extent necessary to accomplish the foreclosure and then not to disturb Tenant's possession nor interfere with any of Tenant's rights under its Lease).

6. In the event that the Mortgagee or its designee shall, in accordance with the foregoing, succeed to the interest of the Landlord under the Lease, the Mortgagee agrees to be bound (or to cause its designee to be bound) to the Tenant under all of the

terms, covenants and conditions of the Lease, and the Tenant agrees, from and after such event, to attorn to the Mortgagee, its designee or the purchaser at any foreclosure sale of the real estate and/or Leased Premises or any part thereof, all rights and obligations under the Lease to continue as though the interest of Landlord has not terminated or such foreclosure proceedings had not been brought, and the Tenant shall have the same remedies against the Mortgagee, designee or purchaser for the breach of any agreement contained in the Lease that the Tenant might have under the Lease against the Landlord; provided, however, that the Mortgagee, designee or purchaser shall not be:

(a) liable for any act or omission of any prior landlord (including the Landlord) except those which arise out of Landlord's default under the Lease and of which Tenant has notified Mortgagee;

(b) subject to any offsets or defenses which the Tenant might have against any prior landlord (including the Landlord) except those which arise out of Landlord's default under the Lease and of which Tenant has notified Mortgagee;

(c) bound by any rent or additional rent which the Tenant might have paid for more than the current month to any prior landlord (including Landlord); or

(d) bound by any amendment or modification of the Lease made without the consent of Mortgagee subsequent to the date hereof.

7. 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; provided, however, that in the event Tenant acquires the right, title, interest and estate of Landlord in and to the Leased Premises, whether pursuant to any purchase option or right of first refusal granted in the Lease or otherwise, if either (i) the indebtedness secured by the Mortgage is satisfied or (ii) Tenant assumes the indebtedness secured by the Mortgage (on a recourse basis), then in such event the estates of Landlord and Tenant in and to the Leased Premises shall merge and the Lease will be extinguished.

In the event Tenant assumes the indebtedness secured by the Mortgage as envisaged by clause (ii) of the foregoing paragraph, Tenant acknowledges that Mortgagee will impose certain customary requirements, which will include, without limitation, (a) execution of an assumption agreement, (b) if Tenant is not Walgreen Co., substituting a guarantee by Walgreen Co. of such indebtedness for Walgreen Co.'s guarantee of the Lease, (c) endorsement to the title insurance policy and (d) evidence that required property and liability insurance is in place.

UNOFFICIAL COPY

Subordination, Non-Disturbance and
Attornment Agreement

Willow, L.L.C.

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

Property of Cook County Clerk's Office

98913713 Page 5 of 12

UNOFFICIAL COPY

Subordination, Non-Disturbance and
Attornment Agreement

Willow, L.L.C.

98913713 Page 6 of 12

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

TENANT:

BOND DRUG COMPANY OF ILLINOIS

MORTGAGEE:

PHOENIX HOME LIFE MUTUAL INSURANCE
COMPANY

By *[Signature]*
Its *Uice President*
Allan Reonick

By _____
Its _____

~~ATTEST:~~

ATTEST:

By _____
Its _____

By _____
Its _____

LANDLORD:

WILLOW, L.L.C.

By _____
Its _____

PROPERTY of Cook County Clerk's Office

UNOFFICIAL COPY

Subordination, Non-Disturbance and
Attornment Agreement

Willow, L.L.C.

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TENANT:

BOND DRUG COMPANY OF ILLINOIS

MORTGAGEE:

PHOENIX HOME LIFE MUTUAL INSURANCE
COMPANY

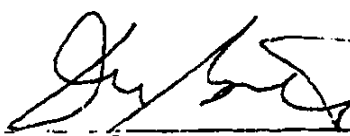
By _____
Its _____

By  _____
Its Laurence P. Fleming ~~2018~~ President

ATTEST:

By _____
Its _____

ATTEST:

By  _____
Its Donald Bertrand Vice President

LANDLORD:

WILLOW, L.L.C.

By _____
Its _____

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Subordination, Non-Disturbance and
Attornment Agreement

Willow, L.L.C.

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

TENANT:

BOND DRUG COMPANY OF ILLINOIS

MORTGAGEE:

PHOENIX HOME LIFE MUTUAL INSURANCE
COMPANY

By _____
Its

By _____
Its

ATTEST:


ATTEST:

By _____
Its

By _____
Its

LANDLORD:

WILLOW, L.L.C.

By  _____
Its MANAGER

Property of Cook County Clerk's Office

98913713 Page 8 of 12

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Subordination, Non-Disturbance and
Attornment Agreement

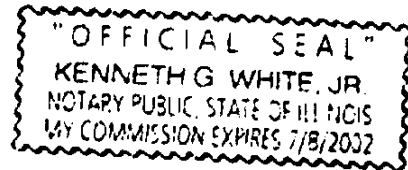
STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

I, Ken White, a Notary Public, do hereby certify that Allan Keonick, personally known to me to be the Vice President of Bond Drug Company of Illinois, and _____, personally known to me to be the _____ of said corporation, and personally known to me to be the same person whose name ~~is~~ subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such ~~Assistant Secretary and Vice President~~, they signed and delivered the said instrument as ~~Assistant Secretary and Vice President~~ 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 the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 3RD day of September, 1998.

Kenneth G. White, Jr.
Notary Public

My Commission Expires: _____



Property of Cook County Clerk's Office

UNOFFICIAL COPY

Subordination, Non-Disturbance and
Attornment Agreement

DESCRIPTION OF REAL ESTATE

LOT 1 IN CENTRUM SUBDIVISION, BEING A SUBDIVISION OF THAT PART OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 24, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SUBDIVISION RECORDED MARCH 23, 1998 AS DOCUMENT 98373126.

Property of Cook County Clerk's Office

EXHIBIT A
(to Subordination, Non-Disturbance and Attornment Agreement)