

UNOFFICIAL COPY 98971819

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1998-10-28 14:40:05
Cook County Recorder 41.00



98971819

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Dated as of October 1, 1998

Walgreen Retail Outlet
Southwest Corner of Roosevelt Road
and Canal Street
Chicago, Cook County, Illinois

This instrument prepared by
and when recorded return to:

John L. Tuohy
Chapman and Cutler
111 West Monroe Street
Chicago, Illinois 60603

BOX 333-CTI

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENMENT AGREEMENT

This Agreement is made and entered into as of this 1st day of October, 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; Roosevelt-Canal, L.L.C., an Illinois limited liability company (hereinafter referred to as "Landlord"), with a mailing address c/o Midwest Property Group, Ltd., 133 East Ogden Avenue, Suite 202, Hinsdale, IL 60521, 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 November 5, 1997 whereby Landlord 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 a Mortgage and Security Agreement dated as of October 1, 1998 and an Assignment of Lease dated as of October 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 approximately \$3,582,000; 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

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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.

4. (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 Wilnot Road, Deerfield, Illinois, 60015, Attention Law Department, and if addressed to Mortgagee, to:

Phoenix Home Life Mutual Insurance Company
c/o Phoenix Duff & Phelps Corporation
56 Prospect Street
P.O. Box 150480
Hartford, Connecticut 06115 0480
Attention: Private Placements Division,
Fax: (860) 403-5451

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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.

8. Tenant shall not be relieved of its obligations under the Lease as a result of any subletting of the Leased Premises or any part thereof.

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

Subordination, Non-Disturbance and
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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

kw By 
Its Vice President
Allan Rianick

By _____
Its _____

LANDLORD:

ROOSEVELT-CANAL, L.L.C.

By 
Its Manager

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Subordination, Non-Disturbance and
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and
year first above written

TENANT

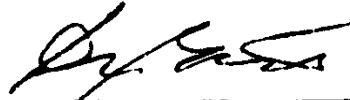
MORTGAGEE

BOND DRUG COMPANY OF ILLINOIS

PHOENIX HOME LIFE MUTUAL
INSURANCE COMPANY

By _____
Its _____

BY
3/2

By 
Its Donald B. ...
Vice President

LANDLORD

ROOSEVELT-CANAL, L.L.C.

By _____
Its Manager

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STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

The foregoing instrument was acknowledged before me this 27th day of August,
1998 by Allan Resnick, the Vice Pres. of Bond Drug Company of Illinois, an
Illinois corporation, on behalf of the corporation.

Kenneth G. White, Jr.
Notary Public

My Commission Expires: _____

"OFFICIAL SEAL"
KENNETH G. WHITE, JR.
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 7/8/2002

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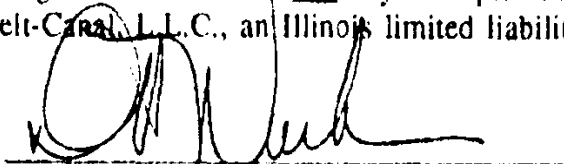
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 14th October day of ~~September~~, 1998 by J.J. Javers, the Manager of Roosevelt-Coral L.L.C., an Illinois limited liability company, on behalf of the company.



Notary Public



My Commission Expires:

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DESCRIPTION OF REAL ESTATE

THAT PART OF BLOCK 1 (EXCEPT LOT A IN BLOCK 1) DESCRIBED BY BEGINNING AT THE INTERSECTION OF THE EAST LINE OF BLOCK 1 AND THE SOUTH LINE OF ROOSEVELT ROAD AND RUNNING, THENCE SOUTH 00 DEGREES 19 MINUTES 20 SECONDS EAST ALONG SAID EAST LINE, 293.74 FEET, THENCE SOUTH 89 DEGREES 40 MINUTES 40 SECONDS WEST AT RIGHT ANGLES TO SAID EAST LINE, 162.45 FEET; THENCE, NORTH 00 DEG 19 MIN 20 SECONDS WEST, PARALLEL TO SAID EAST LINE, 57.97 FEET, THENCE NORTHEASTERLY 70.76 FEET ALONG THE ARC OF A NON-TANGENTIAL CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 136.0 FEET AND A CHORD WHICH BEARS NORTH 14 DEGREES 34 MINUTES 58 SECONDS EAST A DISTANCE OF 69.97 FEET TO A POINT OF TANGENCY ON A LINE PARALLEL WITH AND 144.45 FEET WEST OF THE EAST LINE BLOCK 1; THENCE NORTH 00 DEGREES 19 MINUTES 20 SECONDS WEST, PARALLEL WITH SAID EAST LINE, 168.82 FEET TO THE SOUTH LINE OF ROOSEVELT ROAD; THENCE NORTH 89 DEGREES 56 MIN 32 SECONDS EAST, 144.45 FEET TO THE POINT OF BEGINNING, IN CENTRAL TERMINAL RAILWAY COMPANY'S SUBDIVISION OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 2, 1914, AS DOCUMENT NUMBER 542416, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS CREATED BY THAT CERTAIN COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENT DATED OCTOBER 24, 1997 BY AND BETWEEN SOO T, L. L. C., ROOSEVELT-CANAL, L. L. C. AND SOUTH CENTRAL BANK RECORDED OCTOBER 27, 1997 AS ADN 97801284 OVER AND ACROSS THE LAND DESCRIBED THEREIN.

P I N. 17-21-511-009

STREET ADDRESS: 501 West Roosevelt Road
Chicago, Il.

EXHIBIT A

(to Subordination, Non-Disturbance and Attornment Agreement)

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