7/26/06 9:29:26
BK 115 PG 80
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

Prepared by:
Will Montgomery
Walgreen Co.
104 Wilmot Rd MS # 1420
Deerfield, IL 60015
TEL: 847 315 4573

8/08/06 10:17:39
BK 115 PG 248
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

Being re-recorded to insert date and book and page of deed of trust in second paragraph.

(This Space for Recording Use Only)

**THIS DOCUMENT SHOULD BE RETURNED TO AFTER RECORDING:**

**WALGREEN CO.**
104 Wilmot Road, MS 2252
Deerfield, Illinois 60015
Attn: Lola Muhammad
Real Estate Law Department
Walgreens Store # 6754

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** made in multiple copies as of the 29th day of June, 2006, by and between **UBS REAL ESTATE INVESTMENTS INC.,** a Delaware corporation ("Mortgagee"), **TUSCHMAN #6754, LLC,** a Mississippi limited liability company, (collectively, "Landlord") and **WALGREEN CO.,** an Illinois corporation ("Tenant");

**WITNESSETH:**

**WHEREAS,** Mortgagee is the holder of that certain Deed of Trustee Note dated June 28, 2006 in the original principal amount of ~~$3,550,000.00~~ $3,483,000.00, secured by that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement ("Mortgage") dated June 28, 2006, recorded on July 26, 2006, in Book 2524, at Page 676, in the Office of the Recorder, DeSoto County, State of Mississippi, covering the property legally described on Exhibit "A" attached hereto and made a part hereof;

**WHEREAS,** by Lease dated February 26, 2001, as amended, ("Lease"), recorded by Memorandum of Lease dated of even date, on March 5, 2001 in Book 88, at Page 611, in the Office of the Recorder of DeSoto County, State of Mississippi, WN Goodman-Horn Lake LLC, a Mississippi limited liability company, as original landlord, leased to Tenant, as tenant, the

NWC of Horn Lake & Goodman
4028 Goodman Rd
Horn Lake, MS

Lawyers Title Ted

13

property, Northwest Corner of Goodman Road and Horn Lake Road, in Horn Lake Mississippi, 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;

**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, 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 otherwise, 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 otherwise, 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:

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 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 8 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 8 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 8 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:

If to Mortgagee: UBS REAL ESTATE INVESTMENTS INC.
1251 Avenue of the Americas, 22nd Floor
New York, New York 10020
Attn: Robert Pettinato

If to Tenant: 104 Wilmot Road
Deerfield, Illinois 60015 MS 14220
Attention: Real Estate Law Department

If to Landlord: TUSCHMAN #6754, LLC
4544 Post Oak Place, #392
Houston, Texas
Attn: John Tuschman

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. In the event that Tenant exercises the right of first refusal contained in Article 25 of the Lease, Tenant agrees that (i) any proposed assumption of the Mortgage will be subject to the terms of the Mortgage and (ii) any release of the Mortgage will be subject to the terms and provisions of the Mortgage (including the defeasance provisions contained therein). 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.

12. Notwithstanding anything in the Lease to the contrary, in the event that the Leased Premises is damaged by a fire or other casualty, the insurance proceeds relating to such casualty

shall be deposited with an escrow agent. Such escrow agent shall be a nationally recognized title insurance company, or if none is selected by Tenant, another agent selected by the Mortgagee which is acceptable to Landlord and Tenant, which approval shall not be unreasonably withheld. The escrow agent shall disburse the proceeds in accordance with the terms and provisions of the Lease.

13. Notwithstanding anything contained in Article 14 (a) of the Lease to the contrary, for so long as the Mortgage remains of record, in the event that the Building (as such term is defined in the Lease) and/or Leased Premises and/or improvements thereon shall be damaged or destroyed by fire or other casualty, Tenant shall elect, subject to Tenant's right to terminate the Lease contained in Article 14(b) of the Lease, to repair and restore the Building and/or Leased Premises and/or the improvements thereon, to their condition immediately prior to such damage or destruction.

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

15. 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.

16. Tenant agrees that in the event Tenant elects to provide self-insurance as permitted under the Lease, then in the event of any casualty, Tenant agrees to deposit with an escrow agent an amount equal to the proceeds that would have been paid pursuant to the insurance policies required to be maintained by Tenant if Tenant was not providing self-insurance, and that all of

such proceeds shall be applied by escrow agent to the restoration of the Property in accordance with the terms and conditions of the Lease in the same manner as escrow agent would have applied proceeds paid pursuant to such insurance policies.

Signature Page Follows



#6754
NWC of Horn Lake & Goodman
4028 Goodman Rd
Horn Lake, MS

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

**WALGREEN CO.**

**Robert M. Silverman**
**Divisional Vice President**

**UBS REAL ESTATE INVESTMENTS INC.**

**Print Name:** Richard T. Cadigan
**Title:** Associate Director

**TUSCHMAN #6754, LLC**

**By:**
**Name:** John Tuschman
**Title:** Managing Member

**UBS REAL ESTATE INVESTMENTS INC.**

**Print Name:** David A. Cohen
**Title:** Executive Director

NWC of Horn Lake & Goodman
4028 Goodman Rd
Horn Lake, MS

STATE OF ILLINOIS )
)
COUNTY OF LAKE )

On this 20th day of June 2006, before me appeared Robert M. Silverman, to me personally known, who, being by me duly sworn, did say that he is the Divisional Vice President 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 Divisional Vice President acknowledged said instrument to be the free act and deed of said corporation.
(Seal)

Notary Public

My term expires:

"OFFICIAL SEAL"
SUZANNE L. COLLINS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 4/4/2010

NWC of Horn Lake & Goodman
4028 Goodman Rd
Horn Lake, MS

STATE OF Texas )
)
COUNTY OF Harris )

Before me, a Notary Public in and for said County and State, personally appeared John Tuschman, personally known to me to be a managing member of TUSCHMAN #6754, LLC, a Mississippi limited liability company, who acknowledged execution of the foregoing Subordination, Non-Disturbance and Attornment Agreement, for and on behalf of said corporation, and who, having been duly sworn, stated that the representations therein are true.

Given under my hand and notarial seal this 21st day of June, 2006.

Notary Public

My commission expires:

DETTA L CASTO
Notary Public, State of Texas
My Commission Expires
February 06, 2010

NWC of Horn Lake & Goodman
4028 Goodman Rd
Horn Lake, MS

STATE OF NEW YORK )
)
COUNTY OF NEW YORK )

Before me, a Notary Public in and for said County and State, personally appeared BRAD COHEN, personally known to me to be an Executive Direct of UBS Real Estate Investments Inc., a Delaware company who acknowledged execution of the foregoing Subordination, Non-Disturbance and Attornment Agreement, for and on behalf of said corporation, and who, having been duly sworn, stated that the representations therein are true.

Given under my hand and notarial seal this 23 day of June, 2006.

Raquel A Small
Notary Public

My commission expires:

RACQUEL A.C. SMALL
Notary Public, State of New York
No. 24-6013703
Qualified in Kings County
Commission Expires September 28, 2006

NWC of Horn Lake & Goodman
4028 Goodman Rd
Horn Lake, MS

STATE OF NEW YORK )
)
COUNTY OF NEW YORK )

Before me, a Notary Public in and for said County and State, personally appeared Richard Cadyan, personally known to me to be an Associate Director of UBS Real Estate Investments Inc., a Delaware company who acknowledged execution of the foregoing Subordination, Non-Disturbance and Attornment Agreement, for and on behalf of said corporation, and who, having been duly sworn, stated that the representations therein are true.

Given under my hand and notarial seal this 26 day of June, 2006.

Racquel A.C. Small
Notary Public

My commission expires:

RACQUEL A.C. SMALL
Notary Public, State of New York
No. 24-6013703
Qualified in Kings County
Commission Expires September 28, 2006

NWC of Horn Lake & Goodman
4028 Goodman Rd
Horn Lake, MS

EXHIBIT "A"

LEGAL DESCRIPTION (STORE # 6754)

Lot Two (2), GOODMAN/HORN LAKE SUBDIVISION, located in Section Twenty-nine (29), Township 1 South, Range 8 West, DeSoto County, Mississippi, as recorded in Plat Book 74, Pages 12-13 in the Office of the Chancery Clerk of DeSoto County, Mississippi.

LAWYERS TITLE INSURANCE COMPANY
6363 Poplar Ave. - Suite 108
Memphis, TN 38119
File # MI033136 Attn. Phyllis

NWC of Horn Lake & Goodman
4028 Goodman Rd
Horn Lake, MS