

OFFICIAL RECORD

Requested By:  
NORTHERN NEVADA TITLE

APN: 1220-04-501-007 \ New  
1220-04-501-008 / 1220-04-501-018

ORDER NO.: DO-1050018-LS

Douglas County - NV  
Werner Christen - Recorder  
Page: 1 Of 10 Fee: 23.00  
BK-0106 PG- 9348 RPTT: 0.00



FOR RECORDER'S USE ONLY

TITLE OF DOCUMENT: SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

WHEN RECORDED MAIL TO:

WALGREEN CO.  
Attn: Lola Muhammad, Law Department  
104 Wilmot Road, MS 1420  
Deerfield, Illinois 60015

(This Space for Recording Use Only)

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

**WALGREEN CO.**

104 Wilmot Road, MS 1420  
Deerfield, Illinois 60015  
Attn: Lola Muhammad  
Law Department

Store # 9864

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

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** made in multiple copies as of the 22<sup>nd</sup> day of August, 2005, by and between **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, ("Mortgagee"), **BENCOR/WATERLOO L.P.** a Nevada limited partnership ("Landlord") and **WALGREEN CO.**, an Illinois corporation ("Tenant");

**WITNESSETH:**

**WHEREAS**, Mortgagee is the holder of a Note in the original principal amount of \$4,403,000.00, secured by a Mortgage or Deed of Trust ("Mortgage") dated August 22, 2005, recorded on September 29, 2005, in Book 0905, at Page 11704, in the Official Records of Douglas County, State of Nevada, covering the property legally described on Exhibit "A" attached hereto and made a part hereof;

**WHEREAS**, by Lease dated September 28 2005, ("Lease"), recorded by Memorandum of Lease of even date, on 1-27, 2006, in Book 0106 at Page 9340, in the Official Records of Douglas County, State of Nevada, Landlord, as landlord, leased to Tenant, as tenant, the property, located at the northwest corner of US Highway 395 and Waterloo Lane in Gardnerville, Nevada, 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

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SWC of Main (Hwy 395) & Waterloo  
Gardnerville, NV



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

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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:	P.O. Box 4377 Wichita Falls, Texas 76308-0377
If to Tenant:	104 Wilmot Road, MS 1420 Deerfield, Illinois 60015



If to Landlord: 90 S. Cascade Avenue, Suite 330  
Colorado Springs, Colorado 80903

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. 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. 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.

12. 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.

13. 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.

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

**(Signature Page to follow)**

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SWC of Main (Hwy 395) & Waterloo  
Gardnerville, NV

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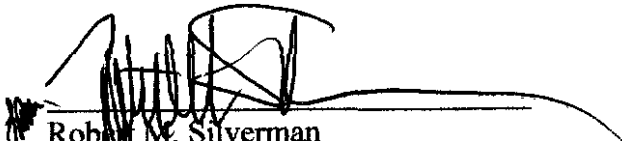


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BK- 0106  
PG- 9353



WALGREEN CO.

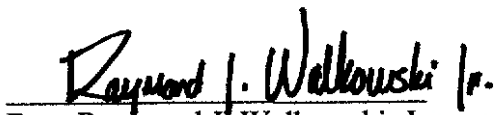
  
Robert M. Silverman  
Divisional Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION

  
By: ~~Larry S. Cook~~ - JEFFREY D. FRANKLIN  
Title: ~~Senior Vice President~~

BENCOR/WATERLOO L.P.

By Bencor Development, LLC,  
General Partner

  
By: Raymond J. Walkowski, Jr.  
Title: Manager

**ACKNOWLEDGEMENT**

STATE OF ILLINOIS

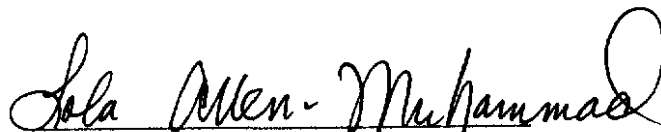
§  
§  
§

COUNTY OF LAKE

On this 23<sup>rd</sup> day of September 2005, 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: 5-5-08

#9864  
SWC of Main (Hwy 395) & Waterloo  
Gardnerville, NV



THE STATE OF TEXAS §  
  §  
  §  
COUNTY OF WICHITA §

*Jeffrey D. Franklin.*

This document was acknowledged before me on October 3, 2005 by ~~Harry S. Cook, Senior~~ Vice President of Wells Fargo Bank, National Association, a national banking association, on behalf of said association.

NOTARY PUBLIC SEAL:

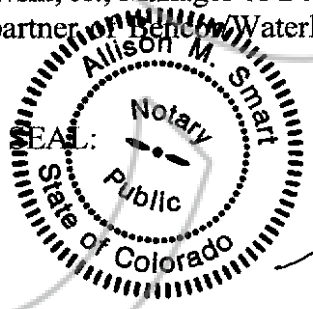


*Frances E. Knowles*  
\_\_\_\_\_  
Notary Public for the  
State of Texas

THE STATE OF COLORADO §  
  §  
  §  
COUNTY OF EL PASO §

This document was acknowledged before me on September 28, 2005 by Raymond J. Walkowski, Jr., Manager of Bencor Development, LLC, a Colorado limited liability company, general partner of Bencor Waterloo L.P., a Nevada limited partnership, on behalf of said partnership.

NOTARY PUBLIC SEAL:



*Allison M. Smart*  
\_\_\_\_\_  
Notary Public for the  
State of Colorado

My Commission Expires: 8/9/2009

#9864  
SWC of Main (Hwy 395) & Waterloo  
Gardnerville, NV



EXHIBIT "A"

LEGAL DESCRIPTION (STORE #9864)

TRACT 1

LEGAL DESCRIPTION

APN: 1220-04-501-007 & 008 AND A PORTION OF 1220-04-501-006

PORTIONS OF THAT CERTAIN PROPERTY WITHIN DOUGLAS COUNTY, NEVADA SITUATE IN SECTION 4, TOWNSHIP 12 NORTH, RANGE 20 EAST, M.D.M., AS SHOWN AS PARCELS "APN 25-142-15 (5.70 ACRES), "APN 25-142-16 (42,000 S.F.)" AND "APN 25-142-17 (53,276 S.F.)" ON RECORD OF SURVEY RECORDED JUNE 26, 1990 AS DOCUMENT #228900, IN OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY POINT OF SAID "APN 25-142-16";  
THENCE ALONG THE LINE OF US HWY 395 S 50°18'53" E, A DISTANCE OF 136.28 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUING ALONG THE LINE OF US HWY 395 S 50°18'53" E, A DISTANCE OF 317.61 FEET;  
THENCE S 88°18'01" W, A DISTANCE OF 37.04 FEET;  
THENCE ALONG A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, WITH A RADIUS OF 100.00 FEET, THROUGH AN ANGLE OF 55°00'26", AND AN ARC LENGTH OF 96.00 FEET, A CHORD BEARING S 18°10'19" W, A DISTANCE OF 92.36 FEET;  
THENCE ALONG THE LINE OF WATERLOO LANE S 45°39'43" W, A DISTANCE OF 162.78 FEET;  
THENCE N 50°00'45" W, A DISTANCE OF 305.61 FEET;  
THENCE N 39°26'27" E, A DISTANCE OF 270.70 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.95 ACRES, MORE OR LESS.

BASIS OF BEARINGS IS NEVADA STATE PLANE COORDINATE SYSTEM, WEST ZONE.

NOTE: Legal description prepared by Jeff Codega Planning/Design Inc.  
Address: 433 W. Plumb Lane, Reno, NV 89509

EXHIBIT "A" – PAGE 1 OF 2



**EXHIBIT "A"**

**TRACT 2  
EASEMENT OVER THE FOLLOWING DESCRIBED PROPERTY**

**LEGAL DESCRIPTION**

That portion of Section 4, Township 12 North, Range 20 East, M.D.M., situate within Douglas County, Nevada, described as follows:  
Beginning at the most Easterly corner of that parcel described in Document No. 344617, recorded August 24, 1994, Official Records Douglas County;  
Thence S 88°18'01" W, a distance of 37.04 feet;  
Thence along the arc of a curve to the right, concave Westerly, having a delta angle of 55°00'26", a radius of 100.00 feet, length of 96.00 feet, with a chord bearing S 18°10'19" W, a distance of 92.36 feet;  
Thence S 45°39'43" W along the Northwesterly right-of-way line of Waterloo Lane a distance of 162.78 feet to the point of beginning;  
Thence continuing S 45°39'43" W along the Northwesterly right-of-way line of Waterloo Lane a distance of 40.18 feet;  
Thence N 44°20'17" W, a distance of 57.34 feet;  
Thence N 39°59'23" E, a distance of 34.31 feet;  
Thence S 50°00'45" E, a distance of 61.03 feet to the point of beginning.

Basis of bearings of this description is Nevada State Plane Coordinate System, West Zone.

Dan Asikainen, P.L.S. #3318  
Jeff Codega Planning/Design  
433 W. Plumb Lane  
Reno, NV 89509

