


Prepared by:  
Alexander G. Staffier,  
Stall Keenan Ogden LLC  
500 West Jefferson Street, Suite 2000  
Louisville Kentucky 40202-2874

  
20180314000082470 1/9 \$39.00  
Shelby Cnty Judge of Probate, AL  
03/14/2018 10:07:12 AM FILED/CERT

#10181L01

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made this 7<sup>th</sup> day of March, 2018 by and between ALABAMA CVS PHARMACY, L.L.C. with offices at c/o CVS Pharmacy, Inc., ATTN: Property Administration Department, One CVS Drive, Mail Code 1105, Woonsocket, Rhode Island 02895 ("Tenant"), Old National Bank, a national banking association, having its office at 333 East Main Street, Louisville, Kentucky 40202 ("Mortgagee") and Hoover United, LLC, an Alabama limited liability company, successor in interest to Orange-Hoover, LLC, having its office at c/o L&J Schmier Management and Investment Co., 6111 Broken Sound Parkway N.W., Suite 110, Boca Raton, Florida 33487, Attention: Jeffrey L. Schmier, Managing Member ("Landlord")

### WITNESSETH:

WHEREAS, Tenant and Landlord have entered into a certain lease dated October 22, 2012, as assigned, modified, supplemented or amended by the documents listed on Exhibit A hereto (collectively, the "Lease") covering premises located at 5400 Highway 280 East, Hoover, Alabama 35242 ("Premises") and as more specifically set forth in the Lease; and on Exhibit B hereto; and

WHEREAS, Mortgagee has made or has agreed to make a mortgage loan in the original principal amount of \$ 7,800,000.00 ("Loan") to Landlord evidenced by a promissory note secured by, among other security, a certain Mortgage/Deed of Trust/Deed to Secure Debt and Security Agreement ("Mortgage") on Landlord's property; and

WHEREAS, the Mortgage, and any other documents or instruments evidencing or securing the Loan are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, Mortgagee has been requested by Tenant and by Landlord to enter into a non-disturbance agreement with Tenant;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, Mortgagee and Tenant and Landlord hereby agree and covenant as follows:

1. The Lease and any extensions, renewals, replacements or modifications thereof, and Tenant's interest in the Premises under the Lease, are and shall at all times be subject, subordinate, and inferior to the lien of the Loan Documents and to the lien of all renewals, modifications and extensions thereof, subject to the terms and conditions set forth in this Agreement.

2. Notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of fixed rent as set forth in the Lease, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof, shall not be diminished or interfered with by Mortgagee, and Tenant's occupancy of the Premises shall not be disturbed by Mortgagee for any reason whatsoever during the term of the

Lease or any such extension or renewal thereof, except as would be permitted for Landlord to do so.

3. In addition, notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of rent or additional rent, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Mortgagee will not join Tenant as a party defendant, unless required by law, in any foreclosure action or other proceeding for the purpose of terminating Tenant's interest and estate under the Lease or for any other purpose.

4. If the interests of Landlord in the Premises shall be transferred to and owned by Mortgagee by reason of foreclosure or other proceedings brought by it, or by deed in lieu of foreclosure, or if Mortgagee takes possession of the Premises pursuant to any provisions of the Loan Documents, then: (i) Mortgagee and Tenant shall be directly bound to each other under all the terms, covenants and conditions of the Lease for the balance of the term thereof and for any extensions or renewals thereof which may be exercised by Tenant, with the same force and effect as if Mortgagee were the Landlord under the Lease; and (ii) Tenant does hereby attorn to Mortgagee as its landlord, said attornment to be effective and self-operative (without the execution of any further instruments), immediately upon Mortgagee succeeding to the interests of the Landlord under the Lease; provided, however, regarding items (i) and (ii) above, that Tenant shall have received written notice from Mortgagee that it has succeeded to the interests of the Landlord under the Lease. The respective rights and obligations of Tenant and Mortgagee upon such attornment, to the extent of the then-remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth from and after Mortgagee's succession to the interests of the Landlord under the Lease, and Tenant shall have the same remedies against Mortgagee for the breach of any agreement contained in the Lease that Tenant might have under the Lease against Landlord if Mortgagee had not succeeded to the interest of Landlord; provided, however, that Mortgagee shall not be:

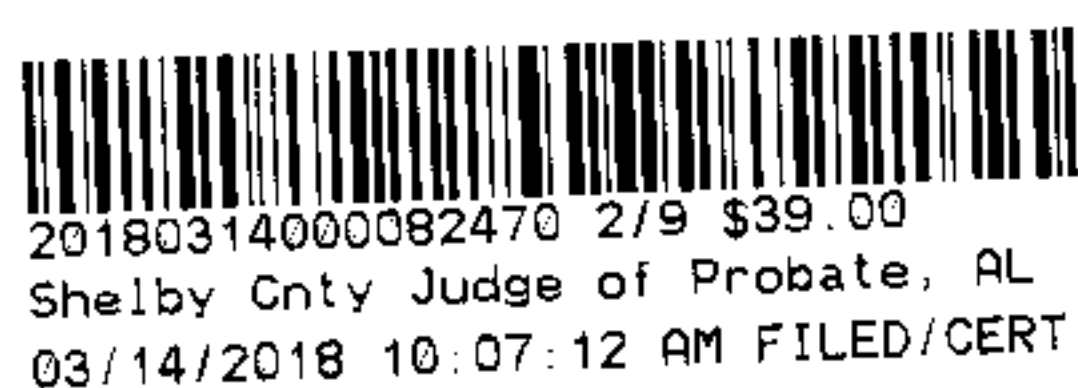
(a) liable for any act or omission of any prior landlord (including Landlord), except to the extent such act or omission continues during the period of possession by Mortgagee or during a period during which Mortgagee is receiving rent from Tenant pursuant to Paragraph 5 hereof; or

(b) subject to any defenses which Tenant might have against any prior landlord (including Landlord) prior to the date that Mortgagee first takes possession of the premises; or

(c) bound by any fixed rent which Tenant might have paid for more than the current month; or

(d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is in an escrow or other fund available to Mortgagee; or

(e) bound by any amendment or modification or waiver of any provision of the Lease made without the consent of the Mortgagee, which would reduce the lease term, rents payable or square footage. Said consent shall be deemed





given if a response by Mortgagee is not received within thirty (30) days of Landlord's request.

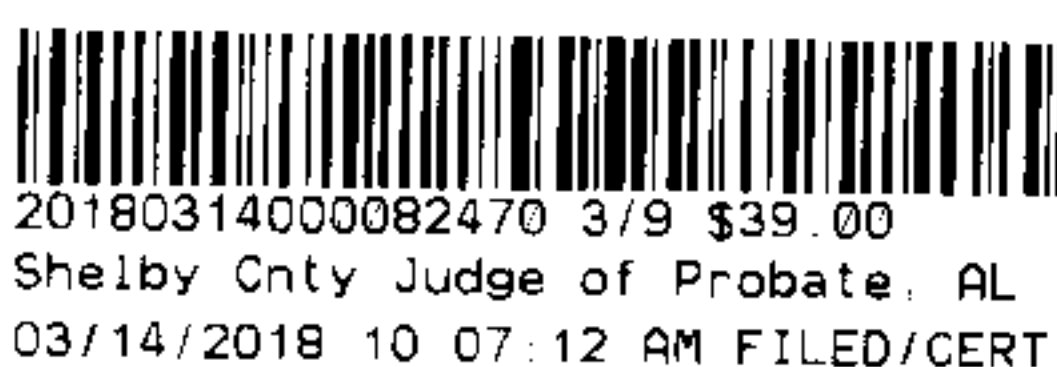
5. Tenant shall not be under any obligation to pay rent to Mortgagee until the Tenant shall have received written notice from Mortgagee that Mortgagee has succeeded to the interests of Landlord under the Lease or that Mortgagee has exercised its rights under the Loan Documents, and directing such payments be made to Mortgagee. Landlord by its execution of this Agreement hereby consents to such direct payments by Tenant to Mortgagee and hereby releases and discharges Tenant of, and from all liability to Landlord on account of any such payments. Upon receipt of such notice, Tenant shall make future payments due under the Lease to Mortgagee until notified otherwise in writing in accordance with the terms of the Lease and Tenant shall not be liable to Landlord to account for such payments.

6. (a) Tenant shall notify Mortgagee in writing at the address set forth herein of the occurrence of any default or event of default by Landlord under the Lease which would give Tenant the right to cancel or terminate the Lease; and Tenant will grant to Mortgagee up to 45 days or a reasonable time (not to exceed 45 days) in which to cure Landlord's default (which time shall be at least the period of time granted to the Landlord by the Lease), provided, however, that Mortgagee shall give Tenant written notice of Mortgagee's intent to cure Landlord's default within ten (10) business days of receipt of Tenant's notice of Landlord's default. Tenant agrees that it will not terminate or cancel the Lease on account of such default until such notice to Mortgagee has been given, and Mortgagee has had the opportunity to cure any such default. Should Mortgagee fail to so notify Tenant of Mortgagee's intent to cure Landlord's default within said ten (10) business days, then Tenant shall have all available rights and remedies (including the right to cure Landlord's default) under the Lease, at law and/or in equity. It is expressly understood and agreed that the above shall not be deemed to create any obligation of Mortgagee to cure any such default or defaults.

(b) Mortgagee shall use best efforts to copy Tenant on any notice of Mortgagor's default under the Loan Documents at the same time that Mortgagee shall serve a Notice of Default on Mortgagor.

7. This Agreement may not be modified or amended, except by a writing by all parties hereto. Upon satisfaction of the Mortgage, this Agreement shall become null and void and be of no further effect.

8. Whenever in this Agreement it is provided that notice be given to or served upon any of the parties, each such notice or demand shall be in writing, and any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: If given or served by the Mortgagee, by mailing the same to the Tenant and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at the addresses listed on Page 1 of this Agreement, or at such other addresses as the Tenant and Landlord may from time to time designate by notice given to the Mortgagee; and if given or served by the Tenant, by mailing the same to the Mortgagee and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Mortgagee and Landlord at the addresses listed on Page 1 of this Agreement, or at such other addresses as the Mortgagee and Landlord



may from time to time designate by written notice given to Tenant; and if given or served by Landlord, by mailing the same to Tenant and Mortgagee by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Tenant and Mortgagee at the addresses listed on Page 1 of this Agreement, or such other addresses as the Tenant and Mortgagee may from time to time designate by written notice given to Landlord.

9. Except as provided in the Lease, Tenant hereby waives any priority it may have over Mortgagee with respect to any share of any condemnation award for a taking of all or part of the Premises, except any award for Tenant's loss of trade fixtures or improvements or installations made by Tenant; and agrees that all of any such award, except as above provided, shall be first payable to Mortgagee.

10. Anything herein or in the Lease to the contrary notwithstanding, in the event that Mortgagee shall acquire title to the Premises, or shall otherwise become liable for any obligations of Landlord under the Lease, Mortgagee shall have no obligation, nor incur any liability, beyond Mortgagee's then interest, if any, in the Premises and the Lease, and Tenant shall look exclusively to such interest of Mortgagee, if any, in the Premises and the Lease, for the payment and discharge of any obligations imposed upon Mortgagee hereunder or under the Lease. Tenant agrees that with respect to any money judgment which may be obtained or secured by Tenant against Mortgagee, Tenant shall look solely to the estate or interest owned by Mortgagee in the Premises, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Mortgagee.

11. Notwithstanding anything herein to the contrary, Tenant shall not be deemed to be in default under any of the terms or conditions of this Agreement until Tenant has received a fully executed original copy of this Agreement.

12. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns. In addition, this Agreement shall be binding upon any successor to Mortgagee's interest as Landlord of the Lease.




20180314000082470 4/9 \$39.00  
Sheiby Cnty Judge of Probate, AL  
03/14/2018 10:07:12 AM FILED/CERT

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

WITNESS:


TENANT:

ALABAMA CVS PHARMACY, L.L.C.

  
\_\_\_\_\_  
Stephanie Morris


By:   
\_\_\_\_\_  
Susan F. Negrotti  
Lease Administration Manager

WITNESS:

  
\_\_\_\_\_  
Marta DiMeglio

STATE OF RHODE ISLAND                    )  
  ) ss:  
COUNTY OF PROVIDENCE                )

On this 22 day of February, 2018, before me personally appeared Susan F. Negrotti, who, being by me duly sworn, did depose and say that she resides in Webster, MA; that she is Lease Administration Manager of ALABAMA CVS PHARMACY, L.L.C., the limited liability company described in and which executed the above instrument and that she executed this instrument on behalf of said limited liability company and that she had authority to do so.

  
\_\_\_\_\_  
NOTARY PUBLIC  
JANE B. McCAULEY  
Notary Public  
State of Rhode Island  
My Commission Expires:  
1-24-2021



20180314000082470 5/9 \$39.00  
Shelby Cnty Judge of Probate, AL  
03/14/2018 10:07:12 AM FILED/CERT

**SIGNATURE PAGE  
TO  
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

WITNESS

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

MORTGAGEE:

**OLD NATIONAL BANK**, a national banking association

By: *James R. Tuttle*  
Name: James R Tuttle Jr  
Title: SVP

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that James R. Tuttle, whose name as Sr. Vice President of Old National Bank, a national banking association, is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being informed of the contents of such instrument, he [she], as such Sr. Vice President and with full authority, executed the same voluntarily for and as the act of THE Old National Bank.

Given under my hand and official seal, this the 1 day of MARCH, 2018

*Ashley L. Reasor*  
Notary Public

My Commission Expires: 8.21.2021

[SEAL]

**ASHLEY L. REASOR  
NOTARY PUBLIC  
STATE AT LARGE KENTUCKY  
MY COMMISSION EXPIRES 08-21-2021**



20180314000082470 6/9 \$39.00  
Shelby Cnty Judge of Probate, AL  
03/14/2018 10:07:12 AM FILED/CERT



WITNESS:

Mavis S. Rosen

LANDLORD:

Hoover United, LLC,  
an Alabama limited liability company

By: [Signature]

Name: Jeffrey L. Schmier

Title: Manager

STATE OF Florida )  
COUNTY OF Palm Beach ) SS:

On this 5<sup>TH</sup> day of March, 2018, before me personally appeared Jeffrey L. Schmier, who, being by me duly sworn, did depose and say that he/she resides in Florida; that he/she is Manager of Hoover United, LLC described in and which executed the above instrument and that he/she executed this instrument on behalf of said limited liability co. and that he/she had authority to do so.

[Signature]  
NOTARY PUBLIC


My commission expires:



20180314000082470 7/9 \$39.00  
Shelby Cnty Judge of Probate, AL  
03/14/2018 10:07:12 AM FILED/CERT

EXHIBIT A

<u>Document</u>	<u>Signed Date</u>
Short Form Memorandum Notice of Lease	October 22, 2012
Guaranty by CVS Health Corporation (formerly known as CVS Caremark Corporation), a Delaware Corporation	October 22, 2012 November 5, 2012
First Amendment to Lease	
Lease Term/Rent Commencement Letter Agreement	August 5, 2013

  
20180314000082470 8/9 \$39.00  
Shelby Cnty Judge of Probate, AL  
03/14/2018 10:07:12 AM FILED/CERT



**EXHIBIT B**

Lot 1, according to the plat of MAC/Hoover Subdivision, as recorded in Map Book 43, page 44, in the Probate Office of Shelby County, Alabama.

LESS AND EXCEPT that portion of subject property specified in Condemnation Case PR-2013-000569 and conveyed to the State of Alabama in Instrument 20130924000384760, being more particularly described as follows:

A part of the SW 1/4 of SW 1/4, Section 32, Township 18 South, Range 1 West, identified as Tract No. 12 on Project No. NHF-0038, in Shelby County, Alabama and being more fully described as follows:

Commencing at a found JPS capped rebar referenced in Map Book 29, page 53 in the Probate Office of Shelby County, thence North 75°49'50" West and along the grantor's South property line a distance of 225.18 feet to a point on the grantor's said property line (said point also on acquired R/W line (said line between a point that is offset 75' RT and parallel to centerline of project), which is the point of BEGINNING; thence North 75°52'55" West and along the grantor's said property line a distance of 35.67 feet to a point of the East present R/W line of SR-119; thence North 21°25'29" East and along the said present R/W line a distance of 85.37 feet to a point on the North present R/W flare of SR-119; thence North 57°40'14" East and along the said present R/W flare a distance of 62.19 feet to a point on the acquired R/W line (said point offset 75' RT and perpendicular to centerline of project), thence South 22°2'4" West and along the acquired R/W line a distance of 130.99 feet: to the point and place of BEGINNING


Together with all beneficial, non-exclusive easement rights set out in the Greystone Commercial Declaration of Covenants, Conditions, and Restrictions recorded in Real Volume 314, page 506, amended by the 1st Amendment recorded as Instrument 1996/00531; amended by the 2nd Amendment recorded as Instrument 1996-00532 and amended by the 3rd Amendment recorded as Instrument 2000-38942, in the Probate Office of Shelby County, Alabama

Together with Non-exclusive easement rights for ingress and egress as set out in the Reciprocal Easement Agreement dated January 1, 1998 by and between Baptist Health Systems, Inc. and Dantract, Inc. and Charles W. Daniel recorded in Instrument 1999/33954 and in Instrument 1999/07730 and amended by Instrument 2001/7233, in the Probate Office of Shelby County, Alabama.

Together with Non-exclusive drainage easement as set out in the Declaration of Drainage Easement dated September 9, 2002 by the Crossroads at Greystone, LLC as recorded in Instrument 20020911000436070, superceded by Instrument 20030827000569350, in the Probate Office of Shelby County, Alabama.

Together with Cross-Easement as to Lot 2-A, according to a resurvey of Lots 1 and 2, The Crossroads at Greystone, as recorded in Map Book 29, page 53, in the Probate Office of Shelby County, Alabama, as set out in the Declaration of Access Easement dated September 9, 2002 by The Crossroads at Greystone, LLC and recorded in Instrument 20020911000436080, superceded by Instrument 20030827000569350, in the Probate Office of Shelby County, Alabama

TOGETHER WITH easement rights granted in that certain Declaration of Easements, Covenants and Restrictions recorded in Instrument 20121106000427620, as recorded in the Probate Office of Shelby County, Alabama.

  
20180314000082470 9/9 \$39.00  
Shelby Cnty Judge of Probate, AL  
03/14/2018 10:07:12 AM FILED/CERT