

**RETURN RECORDED DOCUMENT TO:**

**WALGREEN CO.**

200 Wilmot Road, Dept. #51

Deerfield, Illinois 60015

Attn: Ken White

*This Instrument Prepared by:*

200 Wilmot Road, Deerfield, Illinois 60015

Inst # 1998-44309

11/09/1998-44309

12:00 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

007 CRH 23.50

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

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** made in multiple copies as of the 29th day of September, 1998, by and between **AEGON USA REALTY ADVISORS, INC.**, ("Mortgagee"), and **WALGREEN CO.**, an Illinois corporation ("Tenant");

**WITNESSETH:**

**WHEREAS**, Mortgagee is the holder of a Note in the original principal amount of \$ 2,500,000.00, secured by a Mortgage dated September 30, 1998, by R.K.M. 'Bama, Inc., a(n) Alabama corporation ("Landlord"), recorded on October 1, 19 98, as Document No. 1998-38405, in the Official Records of Shelby County, Alabama, covering the property legally described on Exhibit "A" attached hereto and made a part hereof;

**WHEREAS**, by Lease dated July 29, 1997, ("Lease"), recorded by Memorandum of Lease of even date, on August 29, 1997, as Document No. 1997-27817, in the Official Records of Shelby County, Alabama, Landlord, as landlord, leased to Tenant, as tenant, the property described on Exhibit "A" ("Leased Premises");

**WHEREAS**, Mortgagee and Tenant 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:

(This instrument prepared by Ken White, 200 Wilmot Road, Deerfield, Illinois 60015)

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 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, Mortgagee or any other party shall be in all respects bound by said Lease as Landlord and by all of Tenant's rights thereunder, provided that Tenant is not in continued default, after notice and the time to cure, as provided for in the Lease, in the payment of rent or otherwise under the terms of said Lease.
3. So long as Mortgagee shall be bound by the terms and conditions of said Lease, Tenant shall attorn to Mortgagee when Mortgagee is in possession of the Leased Premises, whether such possession is pursuant to Mortgagee's rights under said Mortgage, 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.
5. Mortgagee shall promptly advise Tenant upon the release, cancellation or termination of said Mortgage.
6. 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.

7. 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 Landlord as provided in the Lease; 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 consent.

8. 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, 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.

9. Tenant agrees that the right of first refusal contained in the Lease shall be subject and subordinate to the lien of the Mortgage and such right of first refusal shall not apply to Lender, its nominee or any other purchaser of the Property, in connection with 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 Property.

**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.**

**AEGON USA REALTY ADVISORS, INC.**

**PFL Life Insurance Company**

*KW* 

**Allan Resnick, Vice President**



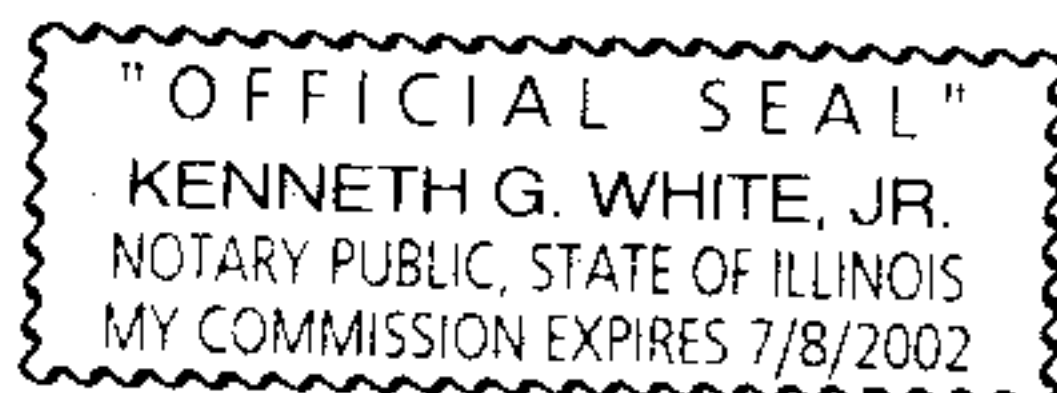
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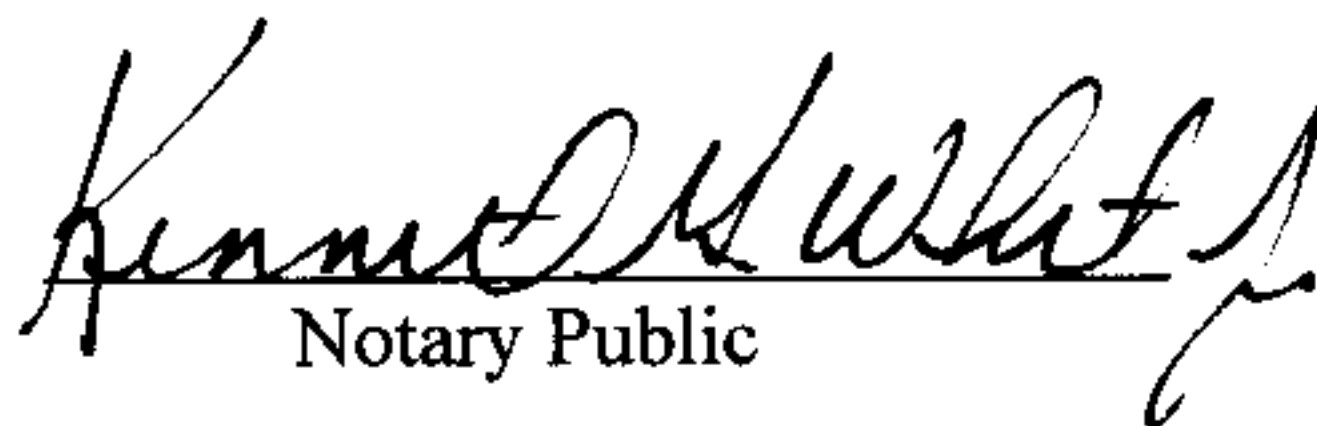
STATE OF ILLINOIS )

COUNTY OF LAKE )

I, Ken White, a Notary Public, do hereby certify that Allan Resnick, personally known to me to be an Vice President, respectively, of WALGREEN CO., an Illinois corporation, and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and severally acknowledged that as such 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 their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the purposes therein set forth.

Given under my hand and notarial seal this 29<sup>th</sup> day of September, 1998



  
Notary Public

My commission expires:

STATE OF IOWA )  
 )  
COUNTY OF LINN )

I, Terry L. McClain, a Notary Public, do hereby certify that David Blankenship, personally known to me to be an Vice President, respectively, of PFL Life Insurance Company, personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and severally acknowledged that as such 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 their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the purposes therein set forth.

Given under my hand and notarial seal this 21 day of October, 1998

Terry L. McClain  
Notary Public

My commission expires: 9-28-01



EXHIBIT A

LEGAL DESCRIPTION OF LEASED PREMISES

AS TO PARCEL 1:

A parcel of land situated in the Southeast 1/4 of Section 25 and the Northeast 1/4 of Section 36, all in Township 19 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Northeast corner of said Section 36, Township 19 South, Range 3 West; thence run South along the East line of Section 36 a distance of 266.80 feet to a point; thence  $117^{\circ}40'00''$  right and run northwesterly a distance of 165.21 feet to a point on the westerly right of way line of U.S. Highway No. 31, and the point of beginning; thence continue on last described course North  $62^{\circ}00'00''$  west a distance of 236.92 feet to a point on the southeasterly right of way line of Valleydale Road; thence  $120^{\circ}24'$  right and run North  $58^{\circ}24'00''$  east along southerly right of way line of Valleydale Road a distance of 254.53 feet to a point; thence  $73^{\circ}57'50''$  right and run South  $47^{\circ}38'11''$  east 29.41 feet to a point on the west right of way line of U.S. Highway 31; thence turn  $55^{\circ}03'31''$  right and run South  $7^{\circ}25'20''$  west along said right of way line a distance of 226.70 feet to the point of beginning.

AS TO PARCEL 2:

A parcel of land situated in the Northeast 1/4 of Section 36, Township 19 south, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of said Section 36; thence run south along the east line of said Section 36 a distance of 266.80 feet, thence turn  $117^{\circ}40'00''$  right and run northwesterly 165.21 feet to a point on the westerly right of way line of U.S. Highway #31, said point being the point of beginning of the parcel of land herein described; thence continue along the last described course a distance of 236.92 feet to a point on the southerly right of way line of Valleydale Road; thence turn  $58^{\circ}26'34''$  left and run southwesterly along said road right of way for 179.46 feet; thence turn  $91^{\circ}07'31''$  left and run southeasterly for 187.95 feet; thence turn  $44^{\circ}22'56''$  left and run southeasterly for 45.57 feet; thence turn  $45^{\circ}37'04''$  left and run northeasterly for 257.43 feet to a point on the westerly right of way line of U.S. Highway #31; thence turn  $51^{\circ}50'47''$  left to the tangent of a curve to the right, said curve having a radius of 1752.68 feet and run northerly along the arc of said curve and said road right of way for 16.26 feet to the point of beginning.

*Also known as Montgomery + Valleydale, Pelham, Alabama.*

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