

WHEN RECORDED RETURN TO:

U.S. Bank National Association
111 S.W. Fifth Avenue, Suite 700
Portland, Oregon 97204
Attention: Ms. Robyn Ehrig



200202120052
Skagit County Auditor
2/12/2002 Page 1 of 14 1:12PM

FIRST AMERICAN TITLE CO.

65686-4

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

Document Title(s) (or transactions contained herein):

- 1. Subordination Agreement
- 2. Non-disturbance Agreement
- 3. Attornment Agreement

Reference Nos. of Documents Released or Assigned:
None

Additional on page

Grantor/Borrower:

- 1. Powell-Anacortes LLC

Additional on page

Beneficiary:

- 1. U.S. Bank National Association

Additional on page

Legal Description (abbreviated):

Section 19, Township 35, Range 2, Ptn. Gov. Lot 2

Additional on page

Assessor's Tax Parcel ID#: R32947 and R32939

200202120050
200202120051

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT made in multiple copies as of the 8th day of February, 2002, by and among U.S. BANK NATIONAL ASSOCIATION, a national banking association ("Mortgagee"), POWELL-ANACORTES LLC, a Washington limited liability company ("Landlord") and WALGREEN CO., an Illinois corporation ("Tenant");

WITNESSETH:

WHEREAS, Mortgagee is the holder of a Note in the original principal amount of \$4,005,000, secured by a Deed of Trust ("Mortgage") dated February 8th, 2002, recorded on February 12, 2002, in Book —, at Page —, in the Official Records of Skagit County, State of Washington, covering the property legally described on Exhibit "A" attached hereto and made a part hereof; AF# 200202120050

WHEREAS, by Lease dated 2-7-, 2002, ("Lease"), evidenced by a Memorandum of Lease of even date, recorded on February 12, 2002, in Book —, at Page —, in the Official Records of Skagit County, State of Washington, Landlord, as landlord, leased to Tenant, as tenant, the property legally described on Exhibit "A" ("Leased Premises"); AF# 200202120051

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 Lease and any extensions, renewals, replacement or modification thereof, and all rights, title and interest of the Tenant in and to the Leased Premises, including but not limited to any acquisition of title to the Leased Premises by Tenant during the term of the Mortgage, is hereby subordinated to the lien of the Mortgage and to all of the terms and conditions contained therein, and to any renewals, amendments, modification, increases if secured indebtedness, replacements, consolidations and extensions thereof. If there shall be a conflict between the terms of the Lease and the terms of the Mortgage, the terms of the Lease shall prevail, except as otherwise expressly set forth herein.

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

1282880.2



200202120052

Skagit County Auditor

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, subject to Section 5 hereof, so long as Tenant is not in default under the Lease after notice and opportunity to cure as set forth in the Lease. 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 holds fee title or 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 be bound by and will perform all the obligations of the Tenant under the terms and conditions of said Lease. Tenant agrees upon election and written demand by Mortgagee after Mortgagee receives title to the Leased Premises, promptly to execute an instrument in confirmation of the foregoing provisions, mutually satisfactory to Mortgagee and Tenant, in which Tenant shall acknowledge such attornments and shall confirm the terms and conditions of its tenancy as set forth in the 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 if Tenant is required to be named in such foreclosure proceeding, Mortgagee agrees 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



200202120052
Skagit County Auditor

1282880.2

(c) Bound by any amendment, modification, cancellation, surrender, or termination of the Lease, in whole or in part, agreed upon by Landlord and Tenant but made without Mortgagee's prior written consent; or

(d) Bound by any security deposit which Tenant may have paid to Landlord, unless such deposit is in an escrow fund available to Lender; or

(e) Bound by any provision in the Lease which obligates any prior landlord to erect or complete any building or to perform any construction work or to make any improvements to the Premises prior to delivery of possession of the Premises to Tenant (collectively referred to as "Construction Work"); provided, however, that if the Construction Work is not completed in accordance with the terms of the Lease and Tenant has notified Lender in accordance with Section 6 below and Lender does not cause the default to be timely cured, then Tenant may invoke any right it may hold to terminate the Lease pursuant to its terms.

6. During the continuance of the 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 and in paragraph 5 above), 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 and in this paragraph 6; 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



200202120052
Skagit County Auditor

1282880.2

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. Notwithstanding any conflicting provision in the Mortgage, so long as Tenant is not in default under the Lease after notice and opportunity to cure as set forth in the Lease, the insurance proceeds arising from an insured casualty at the Leased Premises may be used in accordance with the terms of the Lease, provided that the proceeds are held and disbursed for reconstruction by Lender or a mutually acceptable third party escrow agent pursuant to a construction escrow agreement acceptable to Lender and Tenant; and provided that Walgreen Co. (or its successor by merger) remains the tenant under the Lease.

10. Notwithstanding any other term of the Lease, so long as the Mortgage remains effective, in the event any compensation is awarded or paid for any taking or an acquiring under the power or threat of eminent domain, whether for the whole or part of the Leased Premises, and provided the improvements as described in the Mortgage are not restored as provided therein, all compensation related to the Leased Premises or related to the Lease shall be distributed in the following order:

(a) First, to Mortgagee to extinguish all indebtedness outstanding and secured by the Mortgage; and

(b) Second, any proceeds thereafter, shall be divided between Landlord and Tenant in accordance with the terms of the Lease.

Additionally, Mortgagee shall have no claim to any condemnation proceeds awarded to Tenant for Tenant's trade fixtures, furniture, leasehold improvements which were not financed by Mortgagee, or Tenant's moving costs.



200202120052

Skagit County Auditor

1282880.2

11. 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. Nothing contained herein shall otherwise limit Tenant's rights or remedies as provided in the Lease.

12. All notices under this Agreement shall be deemed to have been duly given if made in writing and sent by United States certified mail, postage prepaid, or by overnight delivery service providing proof of receipt, and addressed as follows:

If to Mortgagee: U.S. Bank National Association
111 S.W. Fifth Avenue, Suite 700
Portland, Oregon 97204
Attention: Kevin Kelly

If to Tenant: Walgreen Co.
200 Wilmot Road
Deerfield, Illinois 60015
Attention: Law Department

If to Landlord: Powell-Anacortes LLC
737 Market Street
Kirkland, Washington 98033
Attention: Peter W. Powell

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.

13. 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 from Mortgagee. 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.

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



200202120052
Skagit County Auditor

1282880.2

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.

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

TENANT:
WALGREEN CO.

By: _____

Allan M. Resnick, Vice President

MORTGAGEE:
**U.S. BANK NATIONAL
ASSOCIATION**

By: _____

Kevin Kelly, Vice President

LANDLORD:
POWELL-ANACORTES LLC

By: _____

Peter W. Powell, Manager



200202120052
Skagit County Auditor

2/12/2002 Page 7 of 14 1:12PM

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.

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

TENANT:
WALGREEN CO.

By: 
Allan M. Resnick, Vice President ^{tsb}

MORTGAGEE:
U.S. BANK NATIONAL
ASSOCIATION

By: _____
Kevin Kelly, Vice President

LANDLORD:
POWELL-ANACORTES LLC

By: _____
Peter W. Powell, Manager



200202120052
Skagit County Auditor

2/12/2002 Page 8 of 14 1:12PM

STATE OF ILLINOIS)
)
COUNTY OF LAKE)

I, Karen A. Kessler, a Notary Public, do hereby certify that Allan M. Resnick, personally known to me to be a Vice President 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 11th day of FEBRUARY, 2002.

Karen A. Kessler
Notary Public

My commission expires: 9-20-05



~~STATE OF OREGON)
)
COUNTY OF MULTNOMAH)~~

SS

This instrument was acknowledged before me on _____, 2002, by Kevin Kelly, as Vice President of U.S. Bank National Association.

Notary Public for Oregon
My commission expires:


200202120052
Skagit County Auditor
2/12/2002 Page 9 of 14 1:12PM

STATE OF ILLINOIS)
)
COUNTY OF LAKE)

I, _____, a Notary Public, do hereby certify that Allan M. Resnick, personally known to me to be a Vice President 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 ____ day of _____, 2002.

Notary Public

My commission expires:

STATE OF OREGON)
)
COUNTY OF MULTNOMAH)

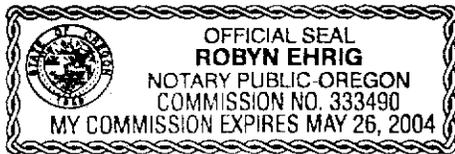
SS

This instrument was acknowledged before me on Feb 8, 2002, by Kevin Kelly, as Vice President of U.S. Bank National Association.

Robyn Ehrig

Notary Public for Oregon

My commission expires: 5/26/04



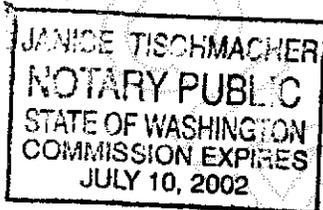
200202120052
Skagit County Auditor

2/12/2002 Page 10 of 14 1:12PM

State of Washington)
)
County of KING) ss.

I certify that I know or have satisfactory evidence that Peter W. Powell is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he authorized to execute the instrument and acknowledged it as the Manager of Powell-Anacortes LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: Feb. 11, 2002.



Janice Tischmacher
Notary Public for Washington

Janice Tischmacher
(Printed or Stamped Name of Notary)
Residing at Burkland, WA
My appointment expires: 7.10.02



Skagit County Auditor
2/12/2002 Page 11 of 14 1:12PM

EXHIBIT "A"

LEGAL DESCRIPTION (STORE # _____)

PARCEL "A":

Those portions of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

(b) That portion of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

Beginning at the intersection of the East line of Commercial Avenue and the South line of 17th Street projected Easterly from the plat of "City of Anacortes", according to the plat recorded in Volume 2 of Plats, Page 4, records of Skagit County, Washington; thence South, 60.00 feet; thence East to the right-of-way of the Great Northern Railway Company; thence Northerly along the West line of said railway right-of-way to the South line of 17th Street, projected Easterly; thence West along the South line of said 17th Street projected to the point of beginning.

(c) That portion of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

Beginning at a point on the East line of Commercial Avenue in the City of Anacortes, which point is 60.00 feet South of the South line of 17th Street produced; thence South on the East line of Commercial Avenue, 60.00 feet; thence at right angles East to the Westerly boundary of the Great Northern Railway right-of-way; thence Northerly along the Westerly boundary of said Great Northern Railway right-of-way to a point where the same intersects a line extending at right angles to Commercial Avenue from the point of beginning; thence West along said line to the point of beginning.

(d) That portion of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

Beginning on the East side of Commercial Avenue at a point 120.00 feet South of the South line of 17th Street projected Easterly from the plat of "City of Anacortes", according to the plat recorded in Volume 2 of Plats, Page 4, records of Skagit County, Washington; thence South, along the East side of said Commercial Avenue, 96.00 feet; thence East, 90.00 feet; thence North, 96.00 feet; thence West, 90.00 to the point of beginning.

TOGETHER WITH the following described:

ALSO commencing on the North line of 18th Street, if produced Easterly from 18th Street as shown on the plat of "City of Anacortes", according to the plat recorded in Volume 2 of Plats, Page 4, records of Skagit County, Washington, 90.00 feet East of the East line of Commercial Avenue; thence North, 96.00 feet; thence East to the West line of the Great Northern Railway right-of-way; thence Southerly along said right-of-way to a point directly East of the point of beginning; thence West to the point of beginning.

PARCEL "B":

That portion of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

Beginning at the point of intersection of the South line of 17th Street extended East from the plat of "City of Anacortes", according to the plat recorded in Volume 2 of Plats, Page 4, records of Skagit County, Washington, with the West line of that certain tract conveyed to Seattle & Northern Railway Company, by Deed dated December 17, 1889, and recorded January 10, 1890, in Volume 9 of Deeds, Page 314, which point is also described as a point bearing from the Northwest corner of said Government Lot 2, East along the North line of said Government Lot 2, 370.00 feet; South 250.00 feet; thence South 24 degrees 03' East to the South line of 17th Street extended East; thence from said point of beginning, run South 24 degrees 03' East to a point that is 216.00 feet South, measured perpendicularly from the South line of 17th Street extended East; thence East parallel with the said South line of 17th Street extended to the West line of Avenue "Q" extended South from the plat of the "City of Anacortes"; thence North along the West line of Avenue "Q" extended, 216.00 feet to the South line of 17th Street extended; thence Westerly along the South line of said extension of 17th Street to the point of beginning.

PARCEL "C":

That portion of Government Lot 2, Section 19, Township 35 North, Range 2 East, W.M., described as follows:

Beginning at a point on the North side of 18th Street produced in the City of Anacortes, Skagit County, Washington, according to the original plat of said City on file and of record in the Office of the Auditor of Skagit County, Washington, and 90.00 feet East of the East line of Commercial Avenue; thence running South 180.00 feet; thence running East, 85.00 feet; thence running North to the West line of the right-of-way of the Seattle and Montana Railway (now Great Northern Railroad); thence running Northwesterly along the said right-of-way to a point due East of the place of beginning; thence West to the point of beginning.

EXCEPT from all the above Parcels "A", "B" and "C", that portion described as follows:



Beginning at the intersection of the North line of 18th Street, if produced Easterly from 18th Street as shown on the plat of "City of Anacortes", according to the plat recorded in Volume 2 of Plats, Page 4, records of Skagit County, Washington, and the East line of Commercial Avenue; thence North along the East line of Commercial Avenue, 63.00 feet; thence East parallel with the North line of 18th Street produced, a distance of 70.00 feet; thence South parallel with the East line of Commercial Avenue, 63.00 feet to the North line of 18th Street produced; thence West along the North line of 18th Street produced, a distance of 70.00 feet to the point of beginning.

AND EXCEPT from all the above Parcels "A", "B" and "C", that portion conveyed to the City of Anacortes by instrument recorded May 12, 1999, under Skagit County Auditor's File No. 9905120020.

(The above described property delineated of record by Survey filed in Volume 15 of Surveys, at Pages 45 and 46, and recorded December 1, 1993, under Auditor's File No. 9312010077, all records of Skagit County, Washington.)



200202120052

Skagit County Auditor

2/12/2002 Page 14 of 14 1:12PM