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Doc#: 1006729029 Fee: \$94.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/08/2010 12:06 PM Pg: 1 of 11

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), made as of the 29th day of January, 2010, by and among Bank of America, N. A., a national banking association, as agent ("Agent") for itself and any other co-lenders as may exist from time to time (collectively, the "Lenders"), and Ogletree, Deakins, Nash, Smoak & Stewart, P.C., a South Carolina professional corporation (hereinafter called "Tenant").

RECITALS

A. Tenant is the tenant under a certain Office Lease (as the same may be amended from time to time with the consent of the Lenders to the extent required under the terms of this Agreement, the "Lease"), dated as of January 28, 2010, with JBC/155 Development LLC, a Delaware limited liability company ("Landlord"), of premises described in the Lease (the "Premises") as more particularly described in Exhibit A hereto, and which shall be located in a building to be known as 165 North Wacker Drive, which is to be constructed by Landlord (the "Building").

B. This Agreement is being entered into in connection with the construction loan (the "Loan") which Lenders have made to Landlord, secured by that certain Construction Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of June 27, 2007, as amended by a First Amendment hereto dated as of August 6, 2008 (the "Mortgage"); the Mortgage and the other documents executed and delivered in connection with the Loan are hereinafter collectively referred to as the "Loan Documents").

AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Agent enters this Agreement for itself and as agent for Lenders, it being the intention that by executing this Agreement, Agent binds itself and any other "Lender" to the terms hereof.

2. Tenant agrees that the Lease and all terms and conditions contained therein and all rights, options, liens and charges created thereby is and shall be subject and subordinate in all respects to the liens created by the Loan Documents, subject to the terms hereof, and to the liens securing all present or future advances under the obligations secured thereby and the liens created by all renewals, amendments, modifications, consolidations, replacements and extensions of secured obligations and the Loan Documents, to the full extent of all amounts secured by the Loan Documents from time to time.

3. Agent agrees that, if Agent exercises any of its rights under the Loan Documents such that it becomes the owner of the Premises, including but not limited to an entry by Agent pursuant to the Mortgage, a foreclosure under the Mortgage, a power of sale under the Mortgage or otherwise: (a) the Lease shall continue in full force and effect as a direct lease between Agent and Tenant, subject to all the terms, covenants and conditions of the Lease, (b) Agent shall not disturb Tenant's right of quiet possession of the Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable notice, grace and cure periods of any term, covenant or condition of the Lease, and after all required notices have been properly served upon

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Tenant, and (c) Agent shall thence forward assume Landlord's obligations under the Lease, subject to the terms of this Agreement and of the Lease. Unless required by law, Agent shall not join Tenant in any foreclosure action under the Mortgage.

4. Tenant agrees that, in the event of an exercise of the power of sale or foreclosure of the Mortgage by Agent or the acceptance of a deed in lieu of foreclosure by Agent or any other succession of Agent to ownership of the Premises, Tenant will attorn to and recognize Agent as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease and to remain bound by and subject to all of the terms, covenants, conditions and obligations set forth in the Lease. Agent, for itself and any Lender, shall accept such attornment of Tenant so long as Tenant is not in default under the Lease beyond the expiration of all applicable notice, grace and cure periods. Landlord hereby expressly authorizes Tenant to make such payments to Agent or any Lender, or as otherwise directed by Agent or Lender, and Landlord, for its respective successors and assigns, agrees that each and every of such payments shall be deemed to be in satisfaction of the corresponding payment required by the Lease. Landlord, for itself and its successors and assigns, hereby releases and discharges Tenant from any and all claims, liabilities, demands, causes of action, costs, and expenses, including without limitation reasonable attorneys' fees and expense, resulting from payments that Tenant makes pursuant to this paragraph and the notice which Tenant receives.

5. Tenant agrees that, in the event Agent succeeds to the interest of Landlord under the Lease, neither Agent nor any Lender shall be:

- (a) liable in any way for any act, omission, neglect or default of any prior Landlord (including, without limitation, the then defaulting Landlord), except (i) as provided in clause 5(d) below and (ii) for Tenant's rights of rent abatement and set off specified in the Lease, provided however that nothing in this clause 5(a) shall diminish Agent's obligation to perform all continuing obligations of Landlord under the Lease from and after the date that Agent so succeeds to the interest of Landlord under the Lease, except that in no event shall Agent or any Lender be required to complete the "Turnover Conditions" (as defined in the Lease) that Landlord has agreed to complete under the Lease, unless Agent gives Tenant a written notice assuming such completion obligations (a "Completion Notice") within thirty (30) days after the date that Agent has notified Tenant of its succession to the interest of Landlord under the Lease through foreclosure of the Mortgage by Agent or the acceptance of a deed in lieu of foreclosure thereof by Agent, or
- (b) subject to any claim, defense, counterclaim or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord), except (i) as provided in clause 5(d) below and (ii) for Tenant's rights of rent abatement and set off specified in the Lease, provided however that nothing in this clause 5(b) shall diminish Agent's obligation to perform all continuing obligations of Landlord under the Lease from and after the date that Agent so succeeds to the interest of Landlord under the Lease, except that in no event shall Agent or any Lender be required to complete the "Turnover Conditions" (as defined in the Lease) that Landlord has agreed to complete under the Lease, unless Agent gives Tenant a Completion Notice within thirty (30) days after the date that Agent has notified Tenant of its succession to the interest of Landlord under the Lease through

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foreclosure of the Mortgage by Agent or the acceptance of a deed in lieu of foreclosure thereof by Agent, or

- (c) bound by any payment of rent or additional rent or any other amounts which may be due to Landlord from Tenant under the Lease which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then defaulting Landlord), or
- (d) bound by any obligation to make any payment to Tenant which was required to be made prior to the time Agent succeeded to any prior Landlord's interest; provided, however, that Agent agrees that in the event that Landlord has failed to make any payment to Tenant required under the Lease with respect to tenant improvement work (such unpaid payments, including any unfunded portion of the "Allowance" as defined in Paragraph 3(b)(i) of the Workletter attached as Exhibit E to the Lease, being referred to herein as the "Unpaid TI Payments") Agent will, in the event that it succeeds to the interest of Landlord under the Lease and provided that Agent has not previously deposited such Unpaid TI Payments with the Escrow Agent pursuant to the Escrow Agreement (as such terms are defined in such Workletter), be obligated to make such Unpaid TI Payments to Tenant in accordance with the terms of the Lease and such Escrow Agreement; and provided further that, if a portion of the Unpaid TI Payments has been deposited with the Escrow Agent pursuant to the Escrow Agreement, then Agent agrees that such funds may be disbursed pursuant to the terms of the Escrow Agreement, or
- (e) accountable for any monies or letters of credit deposited with any prior Landlord (including security deposits), except to the extent such monies or letters of credit are actually received by Agent; provided that, if Agent or any Lender succeeds to Landlord's interest and if the prior Landlord has not delivered to Agent or any Lender such monies or letters of credit previously deposited by Tenant with such prior Landlord, then Tenant shall not be required to deliver to Agent or any Lender a replacement of the monies or letters of credit that Landlord continues to hold; or
- (f) bound by any amendment or modification of the Lease made without the written consent of Agent, except for lease amendments arising from Tenant exercising its expansion options, rights of renewal and rights of first offer set forth in the Lease.

Nothing contained herein shall prevent Agent from naming Tenant in any foreclosure or other action or proceeding initiated in order for Agent to avail itself of and complete any such foreclosure or other remedy.

6. If Agent becomes the owner of the Building, Agent shall promptly so notify Tenant and if the Turnover Conditions have not been completed in accordance with the Lease and Agent has not delivered a Completion Notice to Tenant within the time period provided in Section 5(a) and Section 5(b) above, neither Agent nor any Lender shall be required to complete any such Turnover Conditions and neither Agent nor any Lender shall be liable for Landlord's failure to do so or any damages resulting from such failure. Tenant shall have a right to terminate the Lease if Agent fails to deliver a Completion Notice within the time period set forth in Section 5(a) and

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Section 5(b), such termination right to be exercised within thirty (30) days after the expiration of the period for Agent to deliver such notice under Section 5(a) or Section 5(b) above.

7. [Intentionally deleted.]

8. Tenant hereby agrees to give to Agent copies of all notices of Landlord default(s) under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to and received by Agent. Agent shall have the right to remedy any landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and Tenant shall accept performance by Agent of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. Agent shall have no obligation to remedy any such landlord default under the Lease unless Agent has previously succeeded to the interest of Landlord under the Lease and any such obligations shall be subject to the terms of this Agreement. With respect to any notice of default given to Landlord and Agent prior to Tenant's actual Commencement Date (as such term is defined in the Lease), Agent shall have the opportunity to cure up to the expiration of the cure period set forth in the Lease for Landlord to effect a cure. With respect to any such notice of default given to Landlord and Agent after Tenant's actual Commencement Date, Tenant hereby grants Agent, in addition to the period given to Landlord for remedying defaults, such additional period as may be reasonably necessary for Agent to obtain the access to the Building (including any time required for foreclosure upon the Mortgage) and then to remedy, or cause to be remedied, any such default. In the event of the termination of the Lease by reason of any default thereunder by Landlord, upon Agent's written request, given within thirty (30) days after any such termination, Tenant, within thirty (30) days after receipt of such request, shall execute and deliver to Agent or its designee or nominee a new lease of the Premises for the remainder of the term of the Lease upon all of the terms, covenants and conditions of the Lease, provided that Agent shall continue to be responsible to perform any obligations with respect to the Lease that that are required under Section 5 above. Neither Agent nor its designee or nominee shall become liable under the Lease unless and until Agent or its designee or nominee becomes, and then only with respect to periods in which Agent or its designee or nominee remains, the owner of the Premises. In no event shall Agent or any Lender have any personal liability as successor to Landlord and Tenant shall look only to the estate and property of Agent and Lenders in the Premises and related proceeds thereof, as described in Section 24(B) of the Lease, for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Agent as Landlord under the Lease, and no other property or assets of Agent or any Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease. Agent shall have the right, without Tenant's consent, to foreclose the Mortgage or to accept a deed in lieu of foreclosure or to exercise any other remedies under the Loan Documents.

9. Landlord and Tenant may not terminate the Lease (except as may be expressly permitted under the Lease) without the prior written consent of Agent, which consent may be given or withheld in Agent's sole discretion.

10. Tenant, without independent investigation, has no knowledge of any prior assignment or pledge of the rents accruing under the Lease by Landlord. Tenant acknowledges that the interest of the Landlord under the Lease shall be assigned to Agent solely as security for the purposes specified in the Assignment, and Agent shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of the Assignment or by any subsequent receipt or collection of rents thereunder, unless Agent shall specifically undertake such liability in writing, or as otherwise provided herein.

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11. Each individual executing this Agreement on behalf of Tenant as a limited liability company represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of such limited liability company in accordance with the operating agreement for such limited liability company.

12. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via recognized commercial courier service providing for a receipt, addressed to Tenant or Agent, as the case may be at the following addresses:

If to Tenant:

prior to the Beneficial Occupancy Date to:

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Two First National Plaza
20 South Clark Street, 25th Floor
Chicago, Illinois 60603
Attn: Managing Shareholder

on or after the Beneficial Occupancy Date to:

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
155 North Wacker Drive, Suite 41__
Chicago, Illinois 60603
Attn: Managing Shareholder

and in each case, with a copy to:

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
918 S. Pleasantburg Drive
Greenville, South Carolina 29607
Attn: Director of Office Operations

If to Agent:

Bank of America, N.A.
135 South LaSalle Street, 12th Floor
Chicago, Illinois 60604
Attention: Richard G. Baer, Jr.

If to Landlord:

JBC/155 Development LLC
One North Wacker Drive, 24th Floor
Chicago, Illinois 60606
Attention: John O'Donnell, President

13. The term "Agent" or "Lender" as used herein includes any successor or assign thereof, including without limitation, any co-lender at the time of making the Loan, any purchaser at

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a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the term "Tenant" as used herein includes any successor and assign of the named Tenant herein.

14. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

15. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

16. This Agreement shall be construed in accordance with the laws of the State in which the Premises is located.

17. Tenant shall have the right to file and record this Agreement against the Premises with the office that maintains the land title records for the county in which the Premises is located.

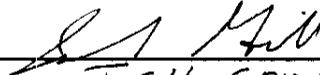
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WITNESS the execution hereof under seal as of the date first above written.


AGENT:

BANK OF AMERICA, N. A., as Agent for the Lenders

By: 
Name: JOSH GRILL
Title: SVP

TENANT:

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., a South Carolina professional corporation

By: 
Name: John P. Smith
Title: Chief Operating Officer

The undersigned Landlord hereby consents to the foregoing Agreement and confirms the facts stated in the foregoing Agreement.

LANDLORD:


JBC/155 DEVELOPMENT LLC,
a Delaware limited liability company

By: JBC/155 HOLDINGS LLC, a Delaware limited liability company, its managing member

By: JBC FUNDS RANDOLPH STREET LLC, a Delaware limited liability company, its managing member

By: JBC OPPORTUNITY FUND II, L.P., a Delaware limited partnership, a managing member

By: BUCK INVESTORS II L.L.C., a Delaware limited liability company, its sole general partner

By: 
Name: JOHN Q. O'DONNELL
Title: Authorized Signatory

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EXHIBIT A to SNDA

Legal Description

Description of 155 North Wacker

PARCEL 1:

THE NORTH ½ OF LOTS 5 AND 6 IN BLOCK 31 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

SUBLOT 1 IN THE ASSESSOR'S SUBDIVISION OF SOUTH ½ OF LOTS 5 AND 6 IN BLOCK 31 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

SUBLOTS 2 AND 3 IN THE PARTITION OF SOUTH ½ OF LOTS 5 AND 6 IN BLOCK 31 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBERS: 17-09-429-001-0000; 17-09-429-002-0000; 17-09-429-003-0000; 17-09-429-004-0000

PARCEL 4:

LOTS 4 AND 5 IN CIRCUIT COURT PARTITION OF THE SOUTH ½ OF LOTS 5 AND 6 IN BLOCK 31 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

THE NORTH-SOUTH AND EAST-WEST 10 FOOT VACATED ALLEY RUNNING NORTH FROM WEST RANDOLPH STREET IN THE BLOCK BOUNDED BY WEST COUCH PLACE, WEST RANDOLPH STREET, NORTH WACKER DRIVE AND NORTH FRANKLIN STREET LYING WEST OF LOT 7 IN BLOCK 31 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBERS: 17-09-429-015-0000; 17-09-429-016-0000

PARCEL 6:

THE WEST ¾ OF LOT 7 IN BLOCK 31 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

PERMANENT INDEX NUMBER: 17-09-429-006-0000

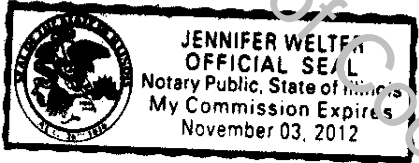
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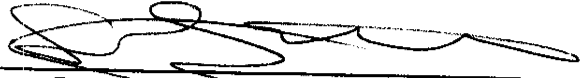
ACKNOWLEDGMENT FOR LANDLORD

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

I HEREBY CERTIFY, that on this 8th day of February, 2010, before me, the undersigned Notary Public of said State, that John O'Donnell as Authorized Signatory of Buck Investors II, L.L.C., a Delaware limited liability company, as the general partner of JBC Opportunity Fund II, L.P., a Delaware limited partnership, as a managing member of JBC Funds Randolph Street LLC, a Delaware limited liability company, as the managing member of JBC/155 Holdings LLC, a Delaware limited liability company, as the managing member of JBC/155 Development LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Authorized Signatory, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said limited liability company and such other entities, for the uses and purposes therein set forth.

WITNESS my hand and Notarial Seal.





Notary Public
My Commission Expires: Nov 3, 2012

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ACKNOWLEDGMENT FOR LENDER

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

I HEREBY CERTIFY, that on this 5TH day of FEBRUARY, 2010, before me, the undersigned Notary Public of said State, that JOSH GRILL as SVP of Bank of America, N. A., a national banking association, in its capacity as agent for certain lenders, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such JOSH GRILL, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said national banking association for the uses and purposes therein set forth.

Preeti Saini

Notary Public
My Commission Expires: 5-20-12



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ACKNOWLEDGMENT FOR TENANT

STATE OF South Carolina)
) ss.:
COUNTY OF Greenville, SC)

I HEREBY CERTIFY, that on this 29th day of January, 2010, before me, the undersigned Notary Public of said State, that as Authorized Signatory of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., a South Carolina professional corporation, as John P. Smith, Chief Operating Officer of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Authorized Signatory of general partner, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said limited partnership for the uses and purposes therein set forth.

Julie S. Boozer

Notary Public
My Commission Expires:

February 7, 2011

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