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5-17-16 L. HYNES # 88-23-541-B1



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Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
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Property of Cook County Clerk's Office

## SUBORDINATION, NOT-DISTURBANCE AND ATTORNMENMENT AGREEMENT

**Box 400-CTCC**

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made by and between Wilson HCF Wisconsin Holdings LLC, a Delaware limited liability company ("**Lender**") and PNC Bank, National Association, a national banking association ("**Tenant**").

### RECITALS:

A. Lender has made or is about to make a loan (together with all advances and increases, the "**Loan**") to 300 W. Adams (Chicago), L.L.C., a Delaware limited liability company ("**Borrower**").

B. Borrower, as landlord, and Tenant have entered into a lease dated December 30, 2008 (the "**Lease**") which leased to Tenant [Suite No. 306W] [Floor 1] (the "Leased Space") located in the Property (defined below).

C. The Loan is or will be secured by the [Open-End] Mortgage, Assignment of Leases and Rents, Fixture Filing Statement and Security Agreement recorded or to be recorded in the official records of the County of Cook, State of Illinois (together with all advances, increases, amendments or consolidations, the "**Mortgage**") and the Assignment of Leases and Rents recorded or to be recorded in such official records (together with all amendments or consolidations, the "**Assignment**"), assigning to Lender the Lease and all rent, additional rent and other sums payable by Tenant under the Lease (the "**Rent**").

D. The Mortgage encumbers the real property, improvements and fixtures located at 300 West Adams Street in the City of Chicago, County of Cook, State of Illinois, commonly known as 300 W. Adams.

IN CONSIDERATION of the mutual agreements contained in this Agreement, Lender and Tenant agree as follows:

1. The Lease and all of Tenant's rights under the Lease are and will remain subject and subordinate to the lien of the Mortgage and all of Lender's rights under the Mortgage and Tenant will not subordinate the Lease to any other lien against the Property without Lender's prior consent.
2. This Agreement constitutes notice to Tenant of the Mortgage and the Assignment and, upon receipt of notice from Lender, Tenant will pay the Rent as and when due under the Lease to Lender and the payments will be credited against the Rent due under the Lease.

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Insert #2

3. Tenant does not have and will not acquire any right or option to purchase any portion of or interest in the Property.

4. Tenant and Lender agree that if Lender exercises its remedies under the Mortgage or the Assignment and if Tenant is not then in default under this Agreement and if Tenant is not then in default beyond any applicable grace and cure periods under the Lease:

(a) Lender will not name Tenant as a party to any judicial or non-judicial foreclosure or other proceeding to enforce the Mortgage unless joinder is required under applicable law but in such case Lender will not seek affirmative relief against Tenant, the Lease will not be terminated and Tenant's possession of the Leased Space will not be disturbed;

(b) If Lender or any other entity (a "**Successor Landlord**") acquires the Property through foreclosure, by other proceeding to enforce the Mortgage or by deed-in-lieu of foreclosure (a "**Foreclosure**"), Tenant's possession of the Leased Space will not be disturbed and the Lease will continue in full force and effect between Successor Landlord and Tenant; and

(c) If, notwithstanding the foregoing, the Lease is terminated as a result of a Foreclosure, a lease between Successor Landlord and Tenant will be deemed created, with no further instrument required, on the same terms as the Lease except that the term of the replacement lease will be the then unexpired term of the Lease. Successor Landlord and Tenant will execute a replacement lease at the request of either

5. Upon Foreclosure, Tenant will recognize and attorn to Successor Landlord as the landlord under the Lease for the balance of the term. Tenant's attornment will be self-operative with no further instrument required to effectuate the attornment except that at Successor Landlord's request, Tenant will execute instruments reasonably satisfactory to Successor Landlord confirming the attornment.

6. Successor Landlord will not be:

(a) liable for any act or omission of any prior landlord under the Lease occurring before the date of the Foreclosure except for defaults and/or repair and maintenance obligations of a continuing nature imposed on the borrower under the Lease;

(b) required to credit Tenant with any Rent paid more than one month in advance or for any security deposit unless such Rent or security deposit has been received by Successor Landlord;

(c) bound by any amendment, renewal or extension of the Lease that is inconsistent with the terms of this Agreement or is not in writing and signed both by Tenant and landlord;

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(d) bound by any reduction of the Rent unless the reduction is in connection with an extension or renewal of the Lease at prevailing market terms or was made with Lender's prior consent;

(e) bound by any reduction of the term<sup>1</sup> of the Lease or any termination, cancellation or surrender of the Lease, if the Leased space represents 10% or more of the net rentable area of the building in which the Leased space is located, unless the reduction, termination, cancellation or surrender occurred during the last 6 months of the term or was made with Lender's prior consent;

(f) bound by any amendment, renewal or extension of the Lease entered into without Lender's prior consent if the Leased Space represents 50% or more of the net rentable area of the building in which the Leased Space is located;

(g) subject to any credits, offsets, claims, counterclaims or defenses that Tenant may have that arose prior to the date of the Foreclosure or liable for any damages Tenant may suffer as a result of any misrepresentation, breach of warranty or any act of or failure to act by any party other than Successor Landlord; Insert #3

(h) bound by any obligation to make improvements to the Property, including the Leased Space, to make any payment or give any credit or allowance to Tenant provided for in the Lease or to pay any leasing commissions arising out of the Lease, except that Successor Landlord will be:

(i) bound by any such obligations provided for in the Lender-approved form lease;

(ii) bound by any such obligations if the overall economic terms of the Lease (including the economic terms of any renewal options) represented market terms for similar space in properties comparable to the Property when the Lease was executed; and

(iii) bound to comply with the casualty and condemnation restoration provisions included in the Lease provided that Successor Landlord receives the insurance or condemnation proceeds; or

(i) liable for obligations under the Lease with respect to any off-site property or facilities for the use of Tenant (such as off-site leased space or parking) unless Successor Landlord acquires in the Foreclosure the right, title or interest to the off-site property.

7. Lender will have the right, but not the obligation, to cure any default by Borrower, as landlord, under the Lease. Tenant will notify Lender of any default that would entitle Tenant to terminate the Lease or abate the Rent and any notice of termination or abatement will not be effective unless Tenant has so notified Lender of the default and Lender has had a 30-day cure period (or such longer period as may be reasonably necessary not to

<sup>1</sup> For purposes of this subparagraph "the term of the Lease" includes any renewal term after the right to renew has been exercised.

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exceed 60 days, if the default is not susceptible to cure within 30 days) commencing on the latest to occur of the date on which (i) the cure period under the Lease expires; (ii) Lender receives the notice required by this paragraph; and (iii) Successor Landlord obtains possession of the Property if the default is not susceptible to cure without possession.

8. All notices, requests or consents required or permitted to be given under this Agreement must be in writing and sent by certified mail, return receipt requested or by nationally recognized overnight delivery service providing evidence of the date of delivery, with all charges prepaid, addressed to the appropriate party at the address set forth above.

9. Any claim by Tenant against Successor Landlord under the Lease or this Agreement will be satisfied solely out of Successor Landlord's interest in the Property and Tenant will not seek recovery against or out of any other assets of Successor Landlord. Successor Landlord will have no liability or responsibility for any obligations under the Lease that arise subsequent to any transfer of the Property by Successor Landlord.

10. This Agreement is governed by and will be construed in accordance with the laws of the state or commonwealth in which the Property is located.

11. Lender and Tenant waive trial by jury in any proceeding brought by, or counterclaim asserted by, Lender or Tenant relating to this Agreement.

12. If there is a conflict between the terms of the Lease and this Agreement, the terms of this Agreement will prevail as between Successor Landlord and Tenant.

13. This Agreement binds and inures to the benefit of Lender and Tenant and their respective successors, assigns, heirs, administrators, executors, agents and representatives.

14. This Agreement contains the entire agreement between Lender and Tenant with respect to the subject matter of this Agreement, may be executed in counterparts that together constitute a single document and may be amended only by a writing signed by Lender and Tenant.

15. Tenant certifies that: the Lease represents the entire agreement between the landlord under the Lease and Tenant regarding the Leased Space; the Lease is in full force and effect; neither party is in default under the Lease beyond any applicable grace and cure periods and no event has occurred which with the giving of notice or passage of time would constitute a default under the Lease; Tenant has entered into occupancy and is open and conducting business in the Leased Space; and all conditions to be performed to date by the landlord under the Lease have been satisfied.

16. Insert #4

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IN WITNESS WHEREOF, Lender and Tenant have executed and delivered this Agreement as of November 10, 2010.



*Heather N. Pearson*

Wilson HCF Wisconsin Holdings LLC, a Delaware limited liability company

By Heitman Capital Management LLC

By: *Steph P. Bailey*

Name: *Stephen P. Bailey*

Title: *Its Executive Vice President*

PNC Bank, National Association, a national banking association

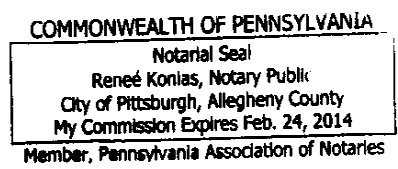
By: *Michelle*  
Name: *Michelle Schatzman*  
Title: *Bank Officer*

Subscribed and sworn before me this *29* day of *November*, 2010

*Renee Konia* Notary Public

(Must Be Notarized)

Insert #5



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INSERT #5

## JOINDER BY BORROWER

Borrower hereby joins in the execution of the Subordination, Non-Disturbance and Attornment Agreement dated November \_\_, 2010 between Wilson HCF Wisconsin Holdings LLC and PNC Bank, National Association solely for the purposes of evidencing its acknowledgement and consent to the terms and conditions of Section 2 of the Agreement:

Witness/Agent:

300 W. ADAMS (CHICAGO), LLC

By: [Signature]  
Name: Reed A. Edwards  
Title: Witness

By: [Signature]  
Name: Scott Goodman  
Title: AUTHORIZED SIGNATORY

Date: 12-16-10, 2010

Office of Cook County Clerk's Office

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## **EXHIBIT "A"** **LEGAL DESCRIPTION**

THAT PART OF LOTS 5, 6 AND 7 IN BLOCK 82, IN SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS, TO-WIT:

COMMENCING AT A POINT IN THE SOUTH LINE OF SAID LOT 5 AT WHICH SAID SOUTH LINE INTERSECTS THE WEST LINE OF FRANKLIN STREET; RUNNING THENCE NORTH ALONG SAID WEST LINE OF FRANKLIN STREET TO THE NORTH LINE OF SAID LOT 5, RUNNING THENCE WEST ALONG THE NORTH LINE OF LOTS 5, 6, AND 7 IN SAID BLOCK 82, 150 FEET; RUNNING THENCE SOUTH AND PARALLEL WITH THE WEST LINE OF SAID FRANKLIN STREET TO THE SOUTH LINE OF LOT 7 AFORESAID; RUNNING THENCE EAST ALONG THE SOUTH LINE OF SAID LOTS 7, 6 AND 5, 150 FEET TO THE PLACE OF BEGINNING.

PIN: 17-16-208-015-0000

ADDRESS: 300 W. ADAMS, CHICAGO, ILLINOIS