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Doc#: 1109722105 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/07/2011 03:12 PM Pg: 1 of 10

This document was prepared by,
and after recording return to:

Randy S. Gussis
3201 Old Glenview Road
Suite 301
Wilmette, Illinois 60091

Permanent Tax Index Numbers:

14-29-407-085-0000, 14-29-407-086-0000,

Property Address:

2600 N. Halsted Street
Chicago, Illinois

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT dated as of April 7, 2011 (the "Agreement"), is executed by and among WAS PNC Halsted, LLC, an Illinois limited liability company (the "Landlord"), National City Bank, a national banking association (the "Tenant"), and The Lincoln National Life Insurance Company (the "Lender").

RECITALS:

A. The Lender is the mortgagee under that certain Mortgage Agreement dated April 7, 2011 recorded on 1109722105 2011 (the "Mortgage"), which Mortgage encumbers the Real Estate (as hereinafter defined) and secures an indebtedness in the principal amount of Three Million and 00/100 Dollars (\$3,000,000.00).

B. The Tenant has entered into that certain Ground Lease dated May 15, 2009 with the Landlord (or the Landlord's predecessor-in-interest) (the "Lease Agreement", the Lease Agreement, together with all amendments and modifications thereof, being collectively referred to herein as the "Lease"), pursuant to which the Tenant has leased the parcel of land (the "Real Estate") legally described on Exhibit "A" attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

Handwritten notes on the left margin: "OK A 398096 da" and a signature.

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AGREEMENTS:

1. The Tenant represents and warrants to the Lender that the Lease constitutes the entire agreement between the Tenant and the Landlord with respect to the Real Estate and there are no other agreements, written or verbal, governing the tenancy of the Tenant with respect to the Real Estate.
2. Lender hereby consents to and approves the Lease.
3. The Tenant covenants with the Lender that the Lease shall be subject and subordinate to the lien of the Mortgage (as the same may be modified and extended), to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease.
4. The Tenant acknowledges that the Landlord has collaterally assigned to the Lender any and all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, the Tenant agrees that, upon receipt of a notice of a default by the Landlord under such assignment and a demand by the Lender for direct payment to the Lender of the rents due under the Lease, the Tenant will honor such demand and make all subsequent rent payments directly to the Lender. The Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to the Landlord and the Lender.
5. The Lender agrees that so long as the Tenant is not in default under the Lease (beyond the Applicable Grace Period (as defined in the Lease)):
 - (a) The Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless the Tenant is a necessary party under applicable law);
 - (b) The possession by the Tenant of the Real Estate and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Real Estate, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage.
6. All condemnation awards and insurance proceeds paid or payable with respect to the Real Estate shall be applied and paid in the manner set forth in the Lease.
7. Lender hereby acknowledges and agrees that any improvements constructed on the Real Estate and all fixtures, trade fixtures, furniture, equipment, or any other personal property, whether or not affixed to the Real Estate and whether owned by Tenant or any subtenant or leased by Tenant from a lessor/owner (hereinafter called the "Equipment Lessor"), installed in or on the Real Estate, regardless of the manner or mode of attachment, shall be and remain the property of Tenant or any such Equipment Lessor, and may be removed by Tenant or any such Equipment Lessor at any time. In no event (including a default under the Lease or Mortgage) shall Lender have any liens, rights or claims in Tenant's or Equipment Lessor's fixtures, equipment or other personal property, whether or not all or any part thereof shall be deemed fixtures; and Lender expressly waives all rights of levy, distraint or execution with respect to said fixtures, equipment and personal property. Lender agrees to execute and deliver to Tenant and Equipment Lessor, within ten (10) days after request therefore, any document required by Tenant or Equipment Lessor in order to evidence the foregoing.
8. If Landlord fails to perform or observe any covenant, condition, provision or obligation to be performed or observed by the Landlord under the Lease (any such failure being hereinafter referred to as a "Landlord's Default"), the Tenant shall use commercially reasonable efforts to promptly provide the Lender with a

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notice of the Landlord's Default, specifying the nature thereof and the section of the Lease under which such Landlord's Default arose. Tenant agrees that, notwithstanding any provision of the Lease, Tenant will not exercise any termination rights or self-help rights available to it under the Lease or pursue any other remedy at law or in equity as a result of a Landlord's Default unless (i) Tenant shall have sent Lender a notice in the manner herein provided and (ii) Lender has failed to cure the Landlord's Default within thirty (30) days after receipt of such notice, or if such default cannot be cured within that time, then such additional time as may be necessary to cure such Landlord's Default (not to exceed a total of sixty (60) days, including the initial thirty (30) day period) if, within such thirty (30) days, Lender has notified Tenant of its intention to cure such default and has commenced and is diligently pursuing the remedies necessary to cure such default. Notwithstanding the foregoing, Lender acknowledges that nothing contained herein shall limit or affect Tenant's abatement remedies set forth in Section 6.01 of the Lease resulting from a Landlord's Default. For the avoidance of doubt, if Landlord fails to complete the Landlord's Work by the Required Completion Date (as set forth in the Lease), it shall be deemed a Landlord's Default and Tenant shall be entitled to the abatement of rent as set forth in Section 6.01 of the Lease without further notice to Landlord or Lender but Tenant may not exercise any termination or self-help rights it may have under the Lease unless the Tenant shall have provided the Lender with (A) notice of the Landlord's Default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of this Section 8.

9. If the Lender or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between the Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subsection (b) below), and in such event:
- (a) The Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term), and the Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time the Lender exercises its remedies then the Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);
 - (b) Such new owner shall be bound to the Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:
 - (i) liable for any act or omission of any prior landlord (including the Landlord);
 - (ii) subject to any offsets or defenses which the Tenant has against any prior landlord (including the Landlord) or subject to the termination rights or self-help rights Tenant may have under the Lease unless the Tenant shall have provided the Lender with (A) notice of the Landlord's Default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of Section 8 above;
 - (iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which the Tenant might have paid in advance for more than the current month to any prior landlord (including the Landlord);
 - (iv) liable to refund or otherwise account to the Tenant for any security or other deposits not actually paid over to such new owner by the Landlord;

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- (v) bound by, or liable for any breach of, any representation or warranty contained in the Lease or otherwise made by any prior landlord (including the Landlord); or
- (vi) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

Notwithstanding anything contained to the contrary in this Section 9(b), Lender acknowledges that nothing contained herein shall limit or affect (i) the obligation the new owner to complete the Landlord's Work as set forth in Section 6.01 of the Lease or (ii) Tenant's abatement remedies set forth in Section 6.01 of the Lease resulting from a Landlord's Default. For the avoidance of doubt, if the Landlord's Work is not completed by the Required Completion Date (as set forth in the Lease), it shall be deemed a Landlord's Default and Tenant shall be entitled to the abatement of rent as set forth in Section 6.01 of the Lease without further notice but Tenant may not exercise any termination or self-help rights it may have under the Lease unless the Tenant shall have provided the Lender with (A) notice of the Landlord's Default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of Section 8 above.

10. All notices or demands required or desired to be given by any party to the others with respect to this Agreement shall be in writing, shall be addressed as provided below, and shall be: (i) delivered personally; (ii) sent by a nationally recognized overnight courier service for next business day delivery, prepaid or billed to sender, or (iii) sent by United States certified mail, return receipt requested, postage prepaid. Notice shall be deemed given and served on the date of actual receipt or refusal of delivery. Any party may change its address or add additional parties for receipt of notices by giving notice of such change to the other party in accordance with the provisions of this Section:

To the Lender: The Lincoln National Life Insurance Company
100 North Greene Street
Greensboro, NC 27401
Attn:

To the Landlord: WAS PNC Halsted, LLC
3201 Old Glenview Road
Suite 301
Wilmette, Illinois 60091
Attn: William A. Shiner

and: Randy S. Gussis
c/o Shiner Management Group, Inc.
3201 Old Glenview Road
Suite 301
Wilmette, IL 60091

To the Tenant: PNC Realty Services
620 Liberty Avenue, 19th floor
Pittsburgh, Pennsylvania 15222
Attention: Lease Manager

and: PNC Bank, National Association
1600 Market Street, 28th Floor
Philadelphia, PA 19103
Attention: Michael G. Balent, Chief Counsel - PNC Realty Services

11. The Tenant acknowledges and agrees that the Lender will be relying on the representations, warranties, covenants and agreements of the Tenant contained herein and that any default by the Tenant hereunder

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shall permit the Lender, at its option, to exercise any and all of its rights and remedies at law and in equity against the Tenant and to join the Tenant in a foreclosure action thereby terminating the Tenant's right, title and interest in and to the Real Estate.

12. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of the Lender, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.
13. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

LANDLORD:

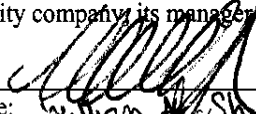
WAS PNC Halsted, LLC, an Illinois limited liability company

By: The Fund in Chicago 2, LLC an Illinois limited liability company, its sole member

By: SCP Realty Fund I, L.P., a Delaware limited partnership, its sole member

By: SCP Partners I G.P., LLC, a Delaware limited liability company, its general partner


By: Shiner Capital Partners, LLC, an Illinois limited liability company, its manager

By: 
Name: William W. Shiner

Its: Chairman of the Board of Managers

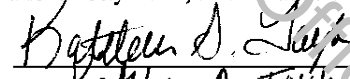
LENDER:

The Lincoln National Life Insurance Company

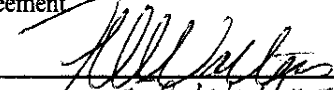
By: 
Name: David Speltz
Its: Vice-President

TENANT:

PNC Bank, National Association, successor-by-merger to National City Bank, a national banking association

By: 
Name: Kathleen A. Taylor
Its: Vice President

PNC Financial Services Group, Inc., the Guarantor under the Lease, hereby consents to the execution by Tenant of the foregoing Subordination, Non-Disturbance and Attornment Agreement

By: 
Name: F.R. Walters
Its: VP

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STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

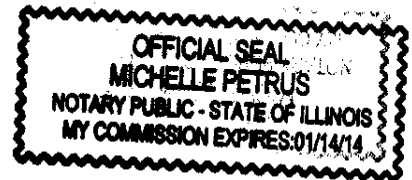
I, Michelle Petrus, a Notary Public in and for said County, in the State aforesaid, do hereby certify that William A. Shiner, Chairman of the Board of Managers of Shiner Capital Partners, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of Chairman of Board of, for the managers uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 5 day of April, 2011.

Michelle Petrus
Notary Public

My Commission Expires:

1/14/14



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STATE OF North Carolina)
) SS.
COUNTY OF Guilford)

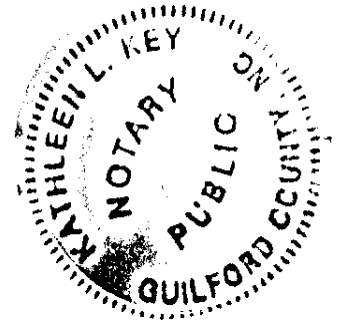
The undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David Sprenger, the Vice President of The Lincoln National Life Insurance Company, a[n] Indiana corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice President, 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 banking association, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 6 day of April, 2011.

Kathleen E. Key
Notary Public

My Commission Expires:

4/9/2011



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STATE OF ~~ILLINOIS~~ ^{Pennsylvania})
) SS.
COUNTY OF Allegheny

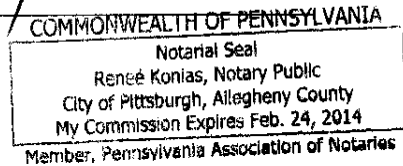
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Kathleen Taylor, the v.p., of PNC Bank, National Association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Ks Taylor, appeared 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 [corporation / limited partnership / limited liability company], for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 1ST day of April, 2011.

Renee Konias
Notary Public

My Commission Expires:

2-24-2014



STATE OF ~~ILLINOIS~~ ^{Pennsylvania})
) SS.
COUNTY OF Allegheny

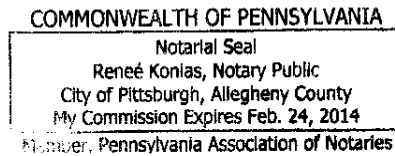
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Frank Waters, the v.p., of PNC Financial Services Group, Inc., a[n] _____, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such fr waters, 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 [corporation / limited partnership / limited liability company], for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 1ST day of April, 2011.

Renee Konias
Notary Public

My Commission Expires:

2-24-2014



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EXHIBIT A

Legal Description of Premises

LOTS 23, 24, 25 AND 26 IN JOHN REYNOLDS SUBDIVISION OF THE EAST 5 ACRES OF THE OUTLOT 14 IN CANAL TRUSTEE'S SUBDIVISION OF THE EAST ½ OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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