

# UNOFFICIAL COPY



Doc# 1925545061 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 09/12/2019 11:52 AM PG: 1 OF 12

Property of Cook County Clerk's Office

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

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Dated: September 5, 2019

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Locke Lord LLP  
111 S. Wacker Drive  
Chicago, Illinois 60606  
Attention: Gina Gamal, Esq.

GTP STRUCTURES II, LLC  
(Tenant)

S X  
P 12  
S 1  
M ✓  
SC X  
E ✓  
INT 6

12

When Recorded Return To: Deborah Cross  
First American Title Insurance Company  
National Commercial Services  
30 N. LaSalle Street, Suite 2700  
Chicago, IL 60602  
File No: NCS 967389

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## SUBORDINATION, NON DISTURBANCE AND ATTORNMENT AGREEMENT

THIS **SUBORDINATION, NON DISTURBANCE AND ATTORNMENT AGREEMENT** (this “**Agreement**”) is made as of the 5th day of September, 2019 by and between the undersigned lender, having an address at 111 S Wacker Drive, Suite 4800, Chicago, Illinois 60606 (together with its affiliates and/or any of its successors and/or assigns, “**Lender**”) and GTP STRUCTURES II, LLC, a Delaware limited liability company, having an address at 10 Presidential Way, Woburn, MA 01801 (“**Tenant**”).

### RECITALS:

A. Lender has made a loan in the approximate amount of \$163,210,000.00 to Landlord (defined below), which Loan is given pursuant to the terms and conditions of that certain Loan Agreement dated as of the date hereof, between Lender and Landlord (the “**Loan Agreement**”). The Loan is evidenced by a certain Promissory Note dated as of the date hereof, given by Landlord to Lender (the “**Note**”) and secured by a certain mortgage dated as of the date hereof, given by Landlord to, or for the benefit of, Lender (the “**Security Instrument**”), which encumbers the fee estate of Landlord in certain premises described in **Exhibit A** attached hereto (the “**Property**”);

B. Tenant occupies a portion of the Property under and pursuant to the provisions of a certain Master Rooftop Lease Agreement dated December 21, 2007 between 200 SOUTH WACKER IL LLC, a Delaware limited liability company, as landlord, as successor-in-interest to Behringer Harvard 200 South Wacker Drive, LLC (“**Landlord**”) and Tenant, as successor-in-interest to Global Tower Assets, LLC, as tenant (as amended, modified, and/or assigned, the “**Lease**”); and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

### AGREEMENT:

For good and valuable consideration, Tenant and Lender agree as follows:

1. **Subordination.** Tenant agrees that the Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the Security Instrument and to the lien thereof and all terms, covenants and conditions set forth in the Security Instrument and the Loan Agreement including without limitation all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby with the same force and effect as if the Security Instrument and Loan Agreement had been executed, delivered and (in the case of the Security Instrument) recorded prior to the execution and delivery of the Lease.

2. **Non-Disturbance.** Lender agrees that if any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall

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not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note, the Security Instrument and the Loan Agreement shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the term of the Lease shall have commenced pursuant to the provisions thereof, (b) Tenant shall be in possession of the premises demised under the Lease, (c) the Lease shall be in full force and effect and (d) Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed beyond the expiration of any applicable notice or grace periods.

3. Attornment. Lender and Tenant agree that upon the conveyance of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Lease shall not be terminated or affected thereby (at the option of the transferee of the Property (the "**Transferee**") if the conditions set forth in Section 2 above have not been met at the time of such transfer) but shall continue in full force and effect as a direct lease between the Transferee and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to the Transferee and the Transferee shall accept such attornment provided, however, that the provisions of the Security Instrument and the Loan Agreement shall govern with respect to the disposition of any casualty insurance proceeds or condemnation awards and the Transferee shall not be:

(a) obligated to complete any construction work required to be done by Landlord pursuant to the provisions of the Lease or to reimburse Tenant for any construction work done by Tenant,

(b) liable for any act or omission of Landlord,

(c) required to make any repairs to the Property or to the premises demised under the Lease required as a result of fire, or other casualty or by reason of condemnation unless the Transferee shall be obligated under the Lease to make such repairs and shall have received sufficient casualty insurance proceeds or condemnation awards to finance the completion of such repairs,

(d) required to make any capital improvements to the Property or to the premises demised under the Lease which Landlord may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment of the premises demised under the Lease,

(e) subject to any offsets, defenses, abatement or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which the Transferee shall become the owner of the Property,

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(f) liable for the return of rental security deposits, if any, paid by Tenant to Landlord in accordance with the Lease unless such sums are actually received by the Transferee,

(g) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any prior Landlord unless (i) such sums are actually received by the Transferee or (ii) such prepayment shall have been expressly approved of by the Transferee,

(h) bound to make any payment to Tenant which was required under the Lease, or otherwise, to be made prior to the time the Transferee succeeded to Landlord's interest,

(i) bound by any assignment of the Lease or sublease of the Property, or any portion thereof, made prior to the time the Transferee succeeded to Landlord's interest other than if pursuant to the provisions of the Lease.

Tenant waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect the Lease and the obligations of Tenant thereunder as a result of any such foreclosure or trustee's sale or otherwise.

4. Notice to Tenant. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

5. Lender to Receive Notices. Tenant shall provide Lender with copies of all written notices sent to Landlord pursuant to the Lease simultaneously with the transmission of such notices to the Landlord. Tenant shall notify Lender of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease or to an abatement of the rents, additional rents or other sums payable thereunder, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of such an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and shall have failed within sixty (60) days after receipt of such notice to cure such default, or if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default. Notwithstanding the foregoing, Lender shall have no obligation to cure any Landlord default.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery

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with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: GTP Structures II, LLC  
10 Presidential Way  
Woburn, MA 01801  
Attention: Managed Sites Legal

With a copy to: GTP Structures II, LLC  
116 Huntington Avenue, 11th Floor  
Boston, MA 02116  
Attention: Legal Department

If to Lender: Bank of China, New York Branch  
410 Madison Avenue  
New York, New York 10017  
Attention: Raymond Qiao

With a copy to: Locke Lord LLP  
111 South Wacker Drive  
Chicago, Illinois 60606  
Attention: Sam Stempel Esq.

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Joint and Several Liability. If Tenant consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Lender and Tenant and their respective successors and assigns.

9. Definitions. The term "Lender" as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Security Instrument.

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10. No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

11. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

12. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

13. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

14. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

15. Transfer of Loan. Lender may sell, transfer and deliver the Note and assign the Security Instrument, this Agreement and the other documents executed in connection therewith to one or more investors in the secondary mortgage market ("**Investors**"). In connection with such sale, Lender may retain or assign responsibility for servicing the loan, including the Note, the Security Instrument, this Agreement and the other documents executed in connection therewith, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer, on behalf of the Investors. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

16. Intentionally Deleted.

17. Limitations on Lender's Liability. Tenant acknowledges that Lender is obligated only to Landlord to make the Loan upon the terms and subject to the conditions set forth in the Loan Agreement. In no event shall Lender or any purchaser of the Property at foreclosure sale or any grantee of the Property named in a deed-in-lieu of foreclosure, nor any heir, legal representative, successor, or assignee of Lender or any such purchaser or grantee (collectively the Lender, such purchaser, grantee, heir, legal representative, successor or assignee, the "**Subsequent Landlord**") have any personal liability for the obligations of Landlord under the Lease and should the Subsequent Landlord succeed to the interests of the Landlord under the Lease, Tenant shall look only to the estate and property of any such Subsequent Landlord in the Property 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 any Subsequent Landlord as landlord under the Lease, and no other property or assets of any Subsequent Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction

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of Tenant's remedies under or with respect to the Lease; provided, however, that the Tenant may exercise any other right or remedy provided thereby or by law in the event of any failure by Subsequent Landlord to perform any such material obligation.

[SIGNATURE PAGE FOLLOWS NEXT]

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IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER:

BANK OF CHINA, CHICAGO BRANCH

By: [Signature]  
Name: James Currie  
Title: VP

By: [Signature]  
Name: Kai Wu  
Title: SVP

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[ACKNOWLEDGMENTS FOLLOW]



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## ACKNOWLEDGMENTS

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

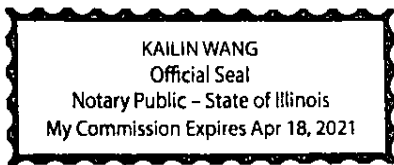
This instrument was acknowledged before me on the 4th day of September, 2019, by James Cume, the VP of Bank of China, Chicago Branch, on behalf of said entity and acknowledged that [he/she] signed and delivered said instrument as [his/her] own free and voluntary act for the uses and purposes therein set forth.



Kailin Wang  
Notary Public in and for the  
State of IL  
Name: Kailin Wang  
My Commission Expires: 4/18/2021

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

This instrument was acknowledged before me on the 4th day of September, 2019, by Kai Wu, the SVP of Bank of China, Chicago Branch, on behalf of said entity and acknowledged that [he/she] signed and delivered said instrument as [his/her] own free and voluntary act for the uses and purposes therein set forth.



Kailin Wang  
Notary Public in and for the  
State of IL  
Name: Kailin Wang  
My Commission Expires: 4/18/2021

[Signatures continued on next page]

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**TENANT:**

GTP STRUCTURES II, LLC,  
a Delaware limited liability company,

By: *Carol Maxime*

Name: Carol Maxime

Title: Senior Counsel, US Tower

*8/28/19*

COMMONWEALTH OF MASSACHUSETTS )

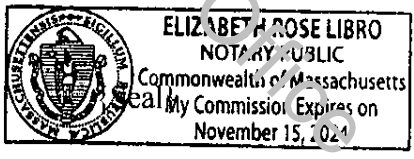
) :ss.

COUNTY OF MIDDLESEX )

On the 28<sup>th</sup> day of August, in the year 2019, before me, the undersigned, personally appeared Carol Maxime, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

*Elizabeth Rose Libro*  
Notary Public

My Commission Expires: 11/15/2024



[Signatures continued on next page]

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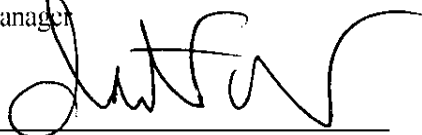
The undersigned accepts and agrees to the provisions of Section 4 hereof:

**LANDLORD:**

**200 SOUTH WACKER II LLC,**  
a Delaware limited liability company

By: Broadway Wacker, LLC,  
a Delaware limited liability company,  
its sole Member

By: Green and Gold JV Manager LLC,  
a Delaware limited liability company,  
its Manager

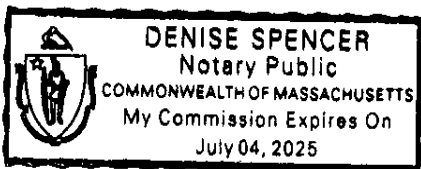
By:   
Name: Matthew Morano  
Title: Authorized Signatory

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ACKNOWLEDGMENT

STATE OF Massachusetts )  
 ) SS.  
COUNTY OF Suffolk )

I, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that on August 5, 2019, Matthew Morano, the Authorized Signatory of Green and Gold JV Manager LLC, being the Manager of Broadway Wacker, LLC, being the sole Member of 200 South Wacker II LLC, a Delaware limited liability company, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of Green and Gold JV Manager LLC, in its capacity as Manager of Broadway Wacker, LLC, in its capacity as sole Member of 200 South Wacker II LLC, for the uses and purposes therein set forth.



Denise Spencer  
Notary Public

My commission expires: 7/4/2025

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## EXHIBIT A

### LEGAL DESCRIPTION

THAT PART OF LOTS 13 AND 14 IN BLOCK 83 IN RESUBDIVISION OF BLOCKS 83, 92 AND 140 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 13; THENCE SOUTH 90 DEGREES WEST ALONG THE NORTH LINE OF SAID LOT 13 (ALSO BEING THE SOUTH LINE OF WEST ADAMS STREET), 54.00 FEET TO THE WEST LINE OF SOUTH WACKER DRIVE, AS DEDICATED AND THE PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT OF LAND; THENCE SOUTH 0 DEGREES 13 MINUTES 30 SECONDS EAST ALONG THE WEST LINE OF SOUTH WACKER DRIVE, 166.04 FEET TO THE SOUTH LINE OF SAID LOT 14 (ALSO BEING THE NORTH LINE OF WEST QUINCY STREET); THENCE NORTH 89 DEGREES 57 MINUTES 40 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 14, 148.00 FEET TO A POINT; THENCE NORTH 9 DEGREES 47 MINUTES 46 SECONDS WEST, 84.20 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 14; THENCE NORTH 10 DEGREES 27 MINUTES 59 SECONDS WEST, 84.36 FEET TO THE NORTH LINE OF SAID LOT 13; THENCE NORTH 90 DEGREES EAST ALONG THE NORTH LINE OF SAID LOT 13, 177.00 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PIN NUMBER: 17-16-214-002-0001

ADDRESS: 200 South Wacker Drive, Chicago, Illinois 60606