

2019-082056

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD  
MICHAEL B BROWN  
RECORDER

2019 Nov 27 10:51 AM

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

THIS AGREEMENT, made this 15<sup>th</sup> day of November, 2019, by and between HOOK-SUPERX, L.L.C., a Delaware limited liability company with offices at c/o CVS Pharmacy, Inc. ATTN: Property Administration Department, One CVS Drive, Woonsocket, Rhode Island 02895 ("Tenant") and PNC BANK, NATIONAL ASSOCIATION, having its office at 101 West Washington Street, Suite 115E, Indianapolis, Indiana 46255 ("Mortgagee"), and WEC 99J-25 LLC, a Delaware limited liability company having its office at 225 West Washington Street, Indianapolis, Indiana 46204 ("Landlord").



WHEREAS, Tenant, successor in interest to Hook-SuperRx, Inc., a Delaware corporation, and Landlord are parties to that certain (i) Amended and Restated Lease, dated December 1, 1999, but having an effective date of September 27, 2000, as amended by that certain First Amendment to Amended and Restated Lease dated as of the date hereof and entered into by Landlord and Tenant (collectively, as may be amended, modified or supplemented from time to time, the "Lease") covering the premises located at 3405 Ridge Road, Highland, IN described on Exhibit A attached hereto (the "Premises") and (ii) First Amended Memorandum of Lease dated as of the date hereof, recorded at \*; and # 2019-082054

WHEREAS, Mortgagee has made or has agreed to make a mortgage loan in the original principal amount of \$27,500,000.00 ("Loan") to Landlord evidenced by a promissory note secured by, among other security, a certain Mortgage/Deed of Trust/Deed to Secure Debt and Security Agreement ("Mortgage") on Landlord's property; and

WHEREAS, the Mortgage, and any other documents or instruments evidencing or securing the Loan are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, Mortgagee has been requested by Tenant and by Landlord to enter into a non-disturbance agreement with Tenant;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, Mortgagee and Tenant and Landlord hereby agree and covenant as follows:

1. The Lease and any extensions, renewals, replacements or modifications thereof, and Tenant's interest in the Premises under the Lease, are and shall at all times be subject, subordinate, and inferior to the lien of the Loan Documents and to the lien of all renewals, modifications and extensions thereof, subject to the terms and conditions set forth in this Agreement.

2. Notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of rent or additional rent as set forth in the Lease, or in the

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performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof, shall not be diminished or interfered with by Mortgagee, and Tenant's occupancy of the Premises shall not be disturbed by Mortgagee for any reason whatsoever during the term of the Lease or any such extension or renewal thereof, except as would be permitted for Landlord to do so.

3. In addition, notwithstanding such subordination, so long as Tenant is not in default (beyond any applicable cure period) in the payment of rent or additional rent, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Mortgagee will not join Tenant as a party defendant, unless required by law, in any foreclosure action or other proceeding for the purpose of terminating Tenant's interest and estate under the Lease or for any other purpose.

4. If the interests of Landlord in the Premises shall be transferred to and owned by Mortgagee or any other purchaser at foreclosure or recipient of a deed in lieu thereof (a "Purchaser") by reason of foreclosure or other proceedings brought by it, or by deed in lieu of foreclosure, or if Mortgagee takes possession of the Premises pursuant to any provisions of the Loan Documents, then: (i) Mortgagee or Purchaser, as applicable, and Tenant shall be directly bound to each other under all of the terms, covenants and conditions of the Lease for the balance of the term thereof and for any extensions or renewals thereof which may be exercised by Tenant, with the same force and effect as if Mortgagee or Purchaser, as applicable, were the Landlord under the Lease; and (ii) Tenant does hereby attorn to Mortgagee or Purchaser, as applicable, as its landlord, said attornment to be effective and self-operative (without the execution of any further instruments), immediately upon Mortgagee or Purchaser, as applicable, succeeding to the interests of the Landlord under the Lease; provided, however, regarding items (i) and (ii) above, that Tenant shall have received written notice from Mortgagee or Purchaser, as applicable, that it has succeeded to the interests of the Landlord under the Lease. The respective rights and obligations of Tenant and Mortgagee or Purchaser, as applicable, upon such attornment, to the extent of the then-remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth from and after Mortgagee's or Purchaser's, as applicable, succession to the interests of the Landlord under the Lease, and Tenant shall have the same remedies against Mortgagee or Purchaser, as applicable, for the breach of any agreement contained in the Lease that Tenant might have under the Lease against Landlord if Mortgagee or Purchaser, as applicable, had not succeeded to the interest of Landlord; provided, however, that Mortgagee and/or Purchaser, as applicable, shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), except to the extent such act or omission continues during the period of possession by Mortgagee or Purchaser, as applicable, or, with respect to Mortgagee's liability, during a period during which Mortgagee is receiving rent from Tenant pursuant to Paragraph 5 hereof; or

(b) subject to any defenses which Tenant might have against any prior landlord (including Landlord) prior to the date that Mortgagee or Purchaser, as applicable, first takes possession of the Premises; or

(c) bound by any fixed rent which Tenant might have paid for more than one month in advance of the due date under the Lease; or

(d) bound by any obligation of any prior landlord (including Landlord) to make any payment to Tenant which was required to be made prior to the time Mortgagee or Purchaser, as applicable, succeeded to any such prior landlord's interest; or

(e) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is received by Mortgagee or Purchaser, as applicable;

(f) bound by any amendment or modification or waiver of any provision of the Lease made without the prior written consent of Mortgagee, which would reduce the lease term, rents payable, or square footage; or

(g) liable with respect to warranties or indemnities of any nature whatsoever made by any prior landlord (including Landlord), including any warranties or indemnities regarding use, compliance with zoning, hazardous wastes or environmental laws, landlord's title, landlord's authority, habitability, fitness for purpose, or possession except for the limited covenant of title set forth in the Lease.

5. Tenant shall not be under any obligation to pay rent to Mortgagee until the Tenant shall have received written notice from Mortgagee that Mortgagee has succeeded to the interests of Landlord under the Lease or that Mortgagee has exercised its rights under the Loan Documents, and directing such payments be made to Mortgagee. Landlord by its execution of this Agreement hereby consents to such direct payments made by Tenant to Mortgagee and hereby releases and discharges Tenant of, and from all liability to Landlord on account of any such payments. Upon receipt of such notice, Tenant shall make future payments due under the Lease to Mortgagee until notified otherwise in writing in accordance with the terms of the Lease and Tenant shall not be liable to Landlord to account for such payments.

6. Tenant shall notify Mortgagee in writing at the address set forth herein of the occurrence of any default or event of default by Landlord under the Lease; and Tenant will grant to Mortgagee up to forty-five (45) days or a reasonable time (not to exceed forty-five (45) days) in which to cure Landlord's default (which time shall be at least the period of time granted to the Landlord by the Lease), provided, however, that Mortgagee shall give Tenant written notice of Mortgagee's intent to cure Landlord's default within ten (10) business days of receipt by Mortgagee of Tenant's notice of Landlord's default. Tenant agrees that it will not terminate or cancel the Lease on account of such default until such notice to Mortgagee has been given, and Mortgagee has had the opportunity to cure any such default. Should Mortgagee fail to so notify Tenant of Mortgagee's intent to cure Landlord's default within said ten (10) business days, then Tenant shall have all available rights and remedies (including the right to cure Landlord's default) under the Lease, at law and/or in equity. It is expressly understood and agreed that the above shall not be deemed to create any obligation of Mortgagee to cure any such default or defaults. Neither Mortgagee nor any Purchaser shall become liable under the Lease unless and until Mortgagee or Purchaser becomes, and then only with respect to and those acts that occur during the period in which Mortgagee or its designee or nominee or Purchaser is, the owner of Landlord's interest in the Premises. Mortgagee shall have the right without Tenant's consent but subject to the provisions of this Agreement, to foreclose, or exercise any power of sale under, the Mortgage or to accept a conveyance in lieu of foreclosure of the Mortgage or to exercise any other remedies under the Loan Documents. Mortgagee shall use reasonable efforts to copy Tenant on any

notice of Landlord's default under the Loan Documents at the same time that Mortgagee shall serve a Notice of Default on Mortgagor.

7. This Agreement may not be modified or amended, except by a writing by all parties hereto. Upon satisfaction of the Mortgage, this Agreement shall become null and void and be of no further effect.

8. Whenever in this Agreement it is provided that notice be given to or served upon any of the parties, each such notice or demand shall be in writing, and any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: If given or served by the Mortgagee, by mailing the same to the Tenant and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at the addresses listed on Page 1 of this Agreement, or at such other addresses as the Tenant and Landlord may from time to time designate by notice given to the Mortgagee; and if given or served by the Tenant, by mailing the same to the Mortgagee and Landlord by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Mortgagee and Landlord at the addresses listed on Page 1 of this Agreement, or at such other addresses as the Mortgagee and Landlord may from time to time designate by written notice given to Tenant; and if given or served by Landlord, by mailing the same to Tenant and Mortgagee by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, addressed to the Tenant and Mortgagee at the addresses listed on Page 1 of this Agreement, or such other addresses as the Tenant and Mortgagee may from time to time designate by written notice given to Landlord.

9. Tenant hereby waives any priority it may have over Mortgagee, except as provided in the Lease, with respect to any share of any award for a Condemnation of all or part of the Premises, except any award for Tenant's loss of trade fixtures or improvements or installations made by Tenant; and agrees that all of any such award, except as above provided, shall be first payable to Mortgagee.

10. Anything herein or in the Lease to the contrary notwithstanding, in the event that Mortgagee shall acquire title to the Premises, or shall otherwise become liable for any obligations of Landlord under the Lease, Mortgagee shall have no obligations, nor incur any liability, beyond Mortgagee's then interest, if any, in the Premises and the Lease, and Tenant shall look exclusively to such interest of Mortgagee, if any, in the Premises and the Lease, for the payment and discharge of any obligations imposed upon Mortgagee hereunder or under the Lease. Tenant agrees that with respect to any money judgment which may be obtained or secured by Tenant against Mortgagee, Tenant shall look solely to the estate or interest owned by Mortgagee in the Premises, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Mortgagee.

11. Notwithstanding anything herein to the contrary, Tenant shall not be deemed to be in default under any of the terms or conditions of this Agreement until Tenant has received a fully executed original copy of this Agreement.

12. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns. In addition, this Agreement shall be binding upon any successor to Mortgagee's interest as Landlord of the Lease.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

SIGNATURE PAGE TO FOLLOW



WITNESS:

*Gail Beaulieu*  
Name: Gail Beaulieu

*Susan Osyk*  
Name: Susan Osyk

TENANT:

HOOK-SUPERX, L.L.C., a Delaware limited liability company

By: *Robert T. Marcello*  
Name: Robert T. Marcello  
Title: Senior Vice President





IN WITNESS WHEREOF, Lender has executed and ensealed this Subordination, Non-Disturbance and Attornment Agreement, as of the day and year first above written.

**LENDER:**

**PNC BANK, NATIONAL ASSOCIATION**

By: *Sarah E. Beeson*

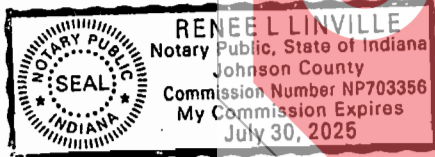
Name: Sarah E. Beeson

Title: Senior Vice President

STATE OF Indiana, COUNTY OF Madison, to wit:

On this the 12<sup>th</sup> day of November, 2019, before me, the undersigned, personally appeared Sarah E. Beeson, who acknowledged herself to be the Senior Vice President of PNC BANK, NATIONAL ASSOCIATION, a national banking association, and on behalf of said national banking association did acknowledge that she, as such Senior Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the national banking association as by herself as Senior Vice President.

In witness whereof I hereunto set my hand and official seal.



*Renee L. Linville*  
Notary public



[SIGNATURES CONTINUE ON THE FOLLOWING PAGES]



LANDLORD:

WEC99J-23 LLC, a Delaware limited liability company

Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: Brian J. McDade

Title: Executive Vice President and Treasurer

Name: \_\_\_\_\_

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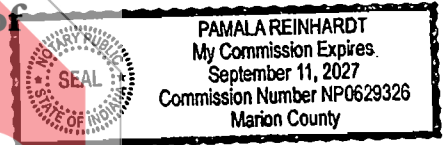


STATE OF INDIANA, COUNTY OF MARION, to wit:

On this the 11<sup>th</sup> day of November, 2019, before me, the undersigned, personally appeared Brian J. McDade, who acknowledged himself to be the Executive Vice President and Treasurer of WEC 99J-25 LLC, a Delaware limited liability company, and on behalf of said limited liability company did acknowledge that he, as such Executive Vice President and Treasurer, being authorized so to do, executed the forgoing instrument for the purposes therein contained, by signing the name of the limited liability company as by himself as Executive Vice President and Treasurer.

In witness whereof I hereunto set my hand and official seal

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*Pamala Reinhardt*

Notary Public

Notary Seal

My Commission Expires: 9-11-2027



**EXHIBIT A**  
**TO**  
**SUBORDINATION, NON-DISTURBANCE**  
**AND ATTORNMENT AGREEMENT**



Lot 1 in Vander Tuuk and Kaznak's Re-Subdivision of a portion of Douthett's Addition to Highland, an addition to the Town of Highland, Lake County, Indiana, as per plat thereof, recorded in Plat Book 87 Page 42, in the Office of the Recorder of Lake County, Indiana.



Prepared by: Thomas A. Hander, Esq.

I affirm, under the penalties for perjury,  
that I have taken reasonable care to  
redact each Social Security number in  
this document, unless required by law

Amy Johnson