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Doc#: 1135339079 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/19/2011 01:47 PM Pg: 1 of 12

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SNDA

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB Approval #2502-0029
Exp. (xx/xx/xxxx)

12

PREPARED

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

Daniel Klaff, Esq.
Applegate & Thorne-Thomsen, P.C.
626 West Jackson, Suite 400
Chicago, Illinois 60661

SUBORDINATION, NON-DISTURBANCE

AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made as of the 15th day of, December, 2011, by and between 104th Street Limited Partnership, an Illinois limited partnership ("Owner" or "Lessor"), as lessor under the lease hereinafter described, and Jeanette Hutchenson, individually, d/b/a Teenchy Weenchy DayCare and Learning Center ("Operator" or "Lessee"), lessee under the aforementioned lease, in favor of Red Mortgage Capital, LLC, a Delaware limited liability company ("Red"), the owner and holder of a Mortgage hereinafter described; the Illinois Housing Development Authority, a body politic and corporate of the State of Illinois ("IHDA") the owner and holder of a Mortgage hereinafter described; and Mercy Housing Lakefront, an Illinois not-for-profit corporation, the owner and holder of Mortgages hereinafter described ("Mercy") (collectively, the "Lenders").

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WITNESSETH:

WHEREAS, Lessor has executed, or will execute that certain Mortgage with Assignment of Rents, dated as of December 15, 2011, (the "Mortgage"), in favor of Red and covering certain real property (the "Property") located in the City of Chicago County of Cook, State of Illinois, with a legal description as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, and covering the improvements situated thereon (the "Improvements"); and

WHEREAS, Lessor has executed, or will execute that certain Mortgage with Assignment of Rents, dated as of December 15, 2011, (the "Mortgage"), in favor of IDHA and covering certain real property (the "Property") located in the City of Chicago County of Cook, State of Illinois, with a legal description as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, and covering the improvements situated thereon (the "Improvements");

WHEREAS, Lessor has executed, or will execute that certain Mortgages with Assignment of Rents, dated as of December 15, 2011, (the "Mortgage"), in favor of Mercy and covering certain real property (the "Property") located in the City of Chicago County of Cook, State of Illinois, with a legal description as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, and covering the improvements situated thereon (the "Improvements");

WHEREAS, Lessor and Lessee entered into that certain unrecorded Lease dated March 1, 2008 (as amended to date, the "Lease"), covering the Improvements for the term and upon the conditions set forth therein; and

WHEREAS, the parties hereto now desire to enter into this Agreement to establish certain rights and obligations with respect to their interests, and to provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration for the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that the Lease, all terms and conditions set forth in the Lease, the leasehold interests and estates created thereby, and the priorities, rights, privileges and powers of Lessee and Lessor thereunder shall be and the same are hereby, and with full knowledge and understanding of the effect thereof, unconditionally made subject and subordinate to the lien and charge of the Mortgage, all terms and conditions contained therein, any renewals, extensions, modifications or replacements thereof, and the rights, privileges and powers of the trustee and Lenders thereunder, and shall hereafter be junior and inferior to the lien and charge of the Mortgage. The parties further agree as follows:

1. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the provisions of the Lease relating to the subordination of the Lease and the leasehold interests and estates created thereby to the lien or charge of the Mortgage.

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2. Lenders consents to the Lease.
3. In the event Lenders or any other purchaser at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by Lenders or Lender's designee of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
 - (a) Lessee shall be bound to Lenders or such other purchaser under all of the terms, covenants and conditions of the Lease for the remaining balance of the term thereof, with the same force and effect as if Lenders or such other purchaser were the lessor under such Lease, and Lessee does hereby agree to attorn to Lenders or such other purchaser as its lessor, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon Lenders or such other purchaser succeeding to the interest of Lessor under the Lease.
 - (b) Subject to the observance and performance by Lessee of all the terms, covenants and conditions of the Lease on the part of the Lessee to be observed and performed, Lenders or such other purchaser shall recognize the leasehold estate of Lessee under all of the terms, covenants and conditions of the Lease for the remaining balance of the term (as the same may be extended in accordance with the provisions of the Lease) with the same force and effect as if Lenders or such other purchaser were the lessor under the Lease and the Lease shall remain in full force and effect and shall not be terminated, except in accordance with the terms of the Lease or this Agreement; provided, however, that Lenders or such other purchaser shall not be (i) liable for any act or omission of Lessor or any other prior lessor, (ii) obligated to cure any defaults of Lessor or any other prior lessor under the Lease which occurred prior to the time that Lenders or such other purchaser succeeded to the interest of Lessor or any other prior lessor under the Lease, (iii) subject to any offsets or defenses which Lessee may be entitled to assert against Lessor or any other prior lessor, (iv) bound by any payment of rent or additional rent by Lessee to Lessor or any other prior lessor for more than one (1) month in advance, (v) bound by any amendment or modification of the Lease made without the written consent of Lenders or such other purchaser, or (vi) liable or responsible for or with respect to the retention, application and/or return to Lessee of any security deposit paid to Lessor or any other prior landlord, whether or not still held by Lessor, unless and until Lenders or such other purchaser has actually received for its own account as lessor the full amount of such security deposit.

Lessee hereby agrees that it will not exercise any right granted it under the Lease, or which it might otherwise have under applicable law, to terminate the Lease on account of a default of Lessor thereunder or the occurrence of any other event without first giving to Lenders prior written notice of its intent to terminate, which notice shall include a statement of the default or event on which such intent to terminate is based. Thereafter, Lessee shall not take any action to terminate the Lease if Lenders (a) within thirty (30) days after service of such written notice on Lenders by Lessee of its intention to terminate the Lease, shall cure such default or event if the same can be cured by the payment or expenditure of money, or (b) shall diligently take action to obtain possession of the leased premises (including possession by receiver) and to cure such

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default or event in the case of a default or event which cannot be cured unless and until Lenders has obtained possession, but in no event to exceed ninety (90) days after service of such written notice on Lenders by Lessee of its intention to terminate.

4. Lessor and Lessee hereby certify to Lenders that the Lease as previously submitted to Lenders has not been further amended.
5. For the purposes of facilitating Lenders' rights hereunder, Lenders shall have, and for such purposes is hereby granted by Lessee and Lessor, the right to enter upon the Property and the Improvements thereon for the purpose of affecting any such cure.
6. Lessee hereby agrees to give to Lenders concurrently with the giving of any notice of default under the Lease, a copy of such notice by mailing the same to Lenders in the manner set forth herein below, and no such notice given to Lessor which is not at or about the same time also given to Lenders shall be valid or effective against Lenders for any purpose.
7. Subordination of Lease to Mortgage and Regulatory Agreement and Regulation by the U.S. Department of Housing and Urban Development ("HUD").
 - (a) The Lease and all estates, rights, options, liens and charges therein contained or created under the Lease are and shall be subject and subordinate to the lien or interest of (i) the Mortgage on the Lessor's interest in the Property in favor of Lenders, its successors and assigns insofar as it affects the real and personal property comprising the Property (and not otherwise owned, leased or licensed by Lessee) or located thereon or therein, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interest thereon, and (ii) that certain Regulatory Agreement for Multifamily Housing Projects between Lessor and HUD to be recorded against the Property.
 - (b) The parties to the Lease agree to execute and deliver to Lenders and/or HUD such other instrument or instruments as the Lenders and/or HUD, or their respective successors or assigns, shall reasonably request from time to time to reconfirm the status of the Lease and to effect and/or confirm the subordination of the Lease to the lien of the Mortgage and the above-described Regulatory Agreement. To the extent that any provision of the Lease shall be in conflict with the HUD Program Obligations (as such term is defined below), the HUD Program Obligations shall be controlling.
 - (c) In the event HUD, at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by HUD of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
 - (i) HUD can terminate the Lease for any violation of the Lease that is not cured within any applicable notice and cure period given in the Lease.

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(ii) As used in this Agreement "HUD Program Obligations" shall mean all applicable statutes and regulations, including all amendments to such statutes and regulations, as they become effective, and all applicable requirements in HUD Handbooks, Notices and Mortgagee Letters that apply to the Property, including all updates and changes to such Handbooks, Notices and Mortgagee Letters that apply to the Property, except that changes subject to notice and comment rulemaking shall become effective upon completion of the rulemaking process.

(d) To the extent there is any inconsistency between the terms of this Subordination, Non Disturbance and Attornment Agreement, and the Lease, the terms of this Subordination, Non Disturbance and Attornment Agreement shall be controlling.

8. For purposes of any notices to be given to Lenders hereunder, the same shall be sent by U.S. certified mail, return receipt requested, postage prepaid, to Lenders at the following addresses:

Red Mortgage Capital, LLC
Two Miranova Place, 12th Floor
Columbus, Ohio 43215
Attn: FHA Servicing

Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, Illinois 60611
Attention: Assistant to the Executive Director for Multifamily Programs

with a copy to:

Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, Illinois 60611
Attention: General Counsel

Mercy Housing Lakefront
120 S. LaSalle, Suite 1850
Chicago, Illinois 60603
Attention: President

or to such other address as Lenders may hereafter notify Lessee in writing by notice sent to Lessee as aforesaid at Lessee's address at the Property, or such other address as Lenders may hereafter be advised of in writing by notice sent to Lenders as aforesaid.

9. For purposes of any notices to be given to the Owner hereunder, the same shall be sent by U.S. certified mail, return receipt requested, postage prepaid, to Owner at the following address:

104th Street Limited Partnership
c/o Mercy Housing Lakefront
120 LaSalle, Suite 1850

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Chicago, Illinois 60603
Attention: President

10. The agreements contained herein shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.
11. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute a single instrument.
12. This Agreement shall, in all respects, be governed by and construed and interpreted in accordance with the laws of the Illinois.
13. **Within ten (10) days after request by Lenders from time to time, Lessor and Lessee severally agree to execute and deliver, at the direction of Lenders, and without charge, a written certification, in form and substance reasonably satisfactory to Lenders, as to such factual matters regarding the Lease as Lender may reasonably request (including, without limitation, that the Lease is unmodified or, if there have been modifications, identifying them and attaching copies thereof; that the Lease is in full force and effect; the dates to which all rent and other sums of money have been paid; whether the party has knowledge of any default by either party under the Lease, or of any known setoffs or defenses to the enforcement of the Lease; whether Tenant has exercised any renewal option or options; and such other matters as may be reasonably required by Lenders).**

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.

[SEE ATTACHED COUNTERPART SIGNATURE PAGES]

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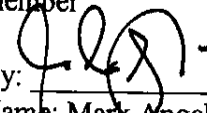
COUNTERPART SIGNATURE PAGE TO SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

LESSOR

104th Street Limited Partnership, an Illinois limited partnership

By: 104th Street MM LLC, an Illinois limited liability company, its general partner

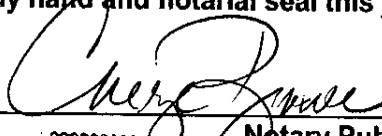
By: Mercy Housing Lakefront, an Illinois not-for-profit corporation, its managing member

By: 
Name: Mark Angelini
Its: Senior Vice President

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

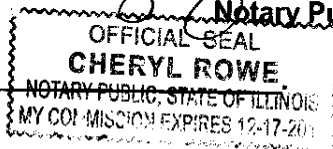
I, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Mark Angelini, the Vice President of Mercy Housing Lakefront, an Illinois not-for-profit corporation which is the Managing Member of 104th Street MM LLC, an Illinois limited liability company, which is the General Partner of 104th Street Limited Partnership, an Illinois limited partnership, 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 to me that he, being thereunder duly authorized, signed and delivered said instrument as the free and voluntary act of said corporation, as Managing Member of said limited liability company, as General Partner of said limited partnership, and as his own free and voluntary act, for the uses and purposes set forth therein.

GIVEN, under my hand and notarial seal this 12th day of December, 2011.



Notary Public

My commission expires



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COUNTERPART SIGNATURE PAGE
TO
SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

LESSEE

Jeanette Hutchenson, individually, d/b/a
Teenchy Weenchy DayCare and
Learning Center

By: *Jeanette Hutchenson*
Name: Jeanette Hutchenson

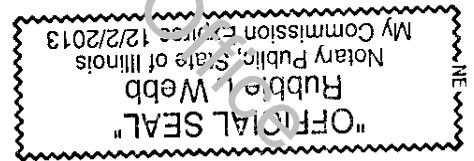
STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

I, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Jeanete Hutchenson, 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 to me that he, being thereunder duly authorized, signed and delivered said instrument as her own free and voluntary act, for the uses and purposes set forth therein.

GIVEN, under my hand and notarial seal this 9th day of December, 2011.

Rubie L. Webb
Notary Public

My commission expires 12-02-2013.



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COUNTERPART SIGNATURE PAGE
TO
SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

LENDER

RED MORTGAGE CAPITAL, LLC,
a Delaware limited liability company

By: Edward H.R. Tellings
Edward H.R. Tellings, Senior Managing
Director

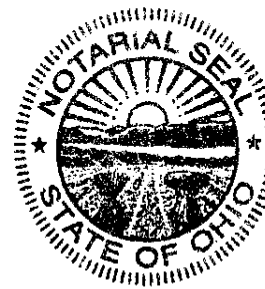
STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

I, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Edward H.R. Tellings, the Senior Managing Director of Red Mortgage Capital, LLC, 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 to me that he, being thereunder duly authorized, signed and delivered said instrument as the free and voluntary act of said limited liability company, and as his own free and voluntary act, for the uses and purposes set forth therein.

GIVEN, under my hand and notarial seal this 13TH day of December, 2011.

Elizabeth M. Markham
Notary Public

My commission expires 8/1/2015.



Elizabeth M. Markham
Notary Public, State of Ohio
My commission expires August 1, 2015

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COUNTERPART SIGNATURE PAGE

TO

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

LENDER

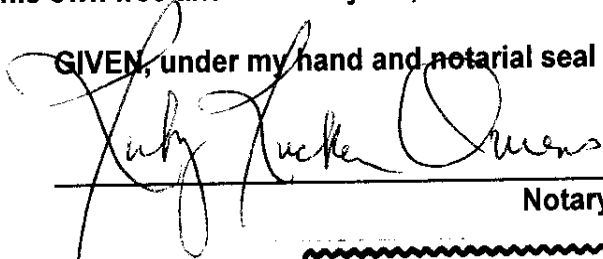
ILLINOIS HOUSING
DEVELOPMENT AUTHORITY, a
body politic and corporate

By: 
Name: **Bryan Zises**
Its: **Assistant Executive Director**

STATE OF ILLINOIS
COUNTY OF COOK) ss:

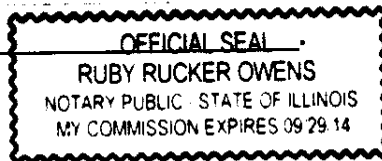
I, a Notary Public ~~in and for the County and State aforesaid~~, DO HEREBY CERTIFY, that Bryan Zises, the Assistant Executive Director of Illinois Housing Development Authority, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he, being thereunder duly authorized, signed and delivered said instrument as the free and voluntary act of said corporation, and as his own free and voluntary act, for the uses and purposes set forth therein.

GIVEN, under my hand and notarial seal this 8th day of December, 2011.



Notary Public

My commission expires



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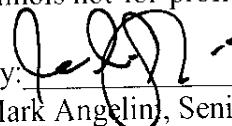
COUNTERPART SIGNATURE PAGE

TO

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

LENDER


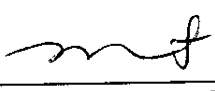
MERCY HOUSING LAKEFRONT, an
Illinois not-for-profit corporation

By: 
Mark Angelini, Senior Vice President

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

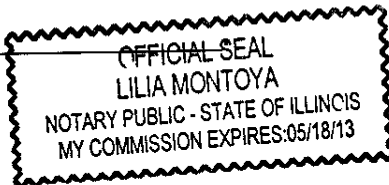
I, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that Mark Angelini, the Vice President of Mercy Housing Lakefront, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he, being thereunder duly authorized, signed and delivered said instrument as the free and voluntary act of said corporation, and as his own free and voluntary act, for the uses and purposes set forth therein.

GIVEN, under my hand and notarial seal this 13th day of December, 2011.

Notary Public

My commission expires _____



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Exhibit "A "

THAT PART OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 14, TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF EAST 104TH STREET, (BY ORDINANCE PASSED OCTOBER 14, 1953 ON PAGE 5817, COUNCIL PROCEEDINGS APPROVED DECEMBER 30, 1953 BY EXAMINER OF MAPS, IN COOK COUNTY, ILLINOIS) AND THE EAST LINE OF SOUTH MARYLAND AVENUE; THENCE EAST ALONG SOUTH LINE OF SAID EAST 104TH STREET, 489.00 FEET; THENCE SOUTH AT RIGHT ANGLES TO AFORESAID LINE, 65.00; THENCE SOUTH 32 DEGREES WEST, 192.00 FEET; THENCE SOUTH 58 DEGREES EAST, 65.00 FEET; THENCE SOUTH 32 DEGREES WEST, 140.00 FEET; THENCE SOUTH 142.00 FEET; THENCE SOUTH 32 DEGREES WEST, 122.00 FEET; THENCE SOUTH 24 DEGREES 52 MINUTES WEST, 112.00 FEET; THENCE SOUTH 65 DEGREES, 08 MINUTES EAST, 69.55 FEET; THENCE NORTH 24 DEGREES 52 MINUTES EAST, 104.00 FEET; THENCE NORTH 32 DEGREES EAST, 70.00 FEET; THENCE SOUTH 58 DEGREES EAST, 55.00 FEET; THENCE SOUTH 32 DEGREES, 58 MINUTES, 40 SECONDS WEST, 357.33 FEET; THENCE SOUTH 59 DEGREES, 58 MINUTES, 06 SECONDS EAST, 189.49 FEET; THENCE SOUTH 30 DEGREES, 01 MINUTE, 54 SECONDS WEST, 230.79 FEET; THENCE NORTH 89 DEGREES, 58 MINUTES, 06 SECONDS WEST, 301.04 FEET; THENCE NORTH ALONG THE EAST LINE OF SAID MARYLAND AVENUE, A DISTANCE OF 1228.07 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS

Property Address: 901 E. 104th Street, Chicago

Pin Number: 25 14 100 040

Approved for Cook County Clerk's Office