

(2 of 6)

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Doc#: 1231829032 Fee: \$66.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/13/2012 10:52 AM Pg: 1 of 15

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

DATED NOVEMBER 5, 2012

PREPARED BY AND MAIL TO:

DANIEL J. EVANS, ESQ.
SEYFARTH SHAW LLP
620 EIGHTH AVENUE
NEW YORK, NEW YORK 10018

C.T.I.C. 8894179 KARSA

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When recorded, return to:

Seyfarth Shaw LLP
620 Eighth Avenue
New York, New York 10018
Attention: Daniel J. Evans, Esq.

AGREEMENT OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT

THIS AGREEMENT OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT is made as of the 5TH day of NOVEMBER, 2012, by and among LEMONT VILLAGE SQUARE, LLC, an Illinois limited liability company ("Lessor"), FOAR Preschools, LLC, an Illinois limited liability company doing business as FOAR Preschools LLC DBA the Learning Experience, as assignee of TLE at Lemont LLC, a Delaware limited liability company ("Lessee"), and PRUDENTIAL MORTGAGE CAPITAL COMPANY, LLC, a Delaware limited liability company ("Lender").

WITNESSETH

WHEREAS, Lessor is the owner of a certain tract of land with improvements thereon ("Property"), and said tract is more fully described in Exhibit "A", which is attached hereto and incorporated herein by reference as if fully set forth at this point; and

WHEREAS, under a certain lease ("Lease") dated June 30, 2008, between Lessor, as successor-in-interest to OS Lemont Development Company, an Illinois limited liability company, and Lessee Lessor did lease, let and demise a portion of the Property ("Premises") as described in the Lease to Lessee for the period of time and upon the covenants, terms and conditions therein stated; and

WHEREAS, by making a loan, Lender has or is about to become the owner of an indebtedness and holder of a certain promissory note (such promissory note together with any and all renewals, modifications, consolidations and extensions thereof, the "Note"), secured by a Deed of Trust and Security Agreement of even date therewith as same may have been or be amended, modified, ratified, confirmed, consolidated, extended, substituted for, renewed or replaced (collectively, the "Security Instrument"), to be recorded in the records of Cook County, Illinois, constituting a first lien upon the Property, and secured by an assignment of Lessor's interest in the Lease as more particularly set forth in a certain Assignment of Leases and Rents; and

WHEREAS, Lender desires that the Lease be subject and subordinate to the Security Instrument, and that Lessee agree to attorn to the purchaser at foreclosure of the Security Instrument in the event of such foreclosure or to Lender in the event of collection of the rent by Lender; and

WHEREAS, Lessee is willing to agree to attorn if Lender will recognize Lessee's rights under the Lease.

NOW, THEREFORE, in consideration of the covenants, terms, conditions and agreements herein contained, and in consideration of other good and valuable consideration, each to the other, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree, covenant and warrant as follows:

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1. That the terms, covenants, provisions and conditions of the Lease and the rights of Lessee in, to and under the Lease and the Premises are and will continue to be subject and subordinate to the Security Instrument, and the lien thereof.

2. So long as (i) Lessee is not in default (beyond any period given Lessee to cure such default) in the payment of rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions of the Lease on Lessee's part to be performed or observed, (ii) Lessee is not in default under this Agreement and (iii) the Lease is in full force and effect: (a) Lessee's possession of the Premises and Lessee's rights and privileges under the Lease, or any extensions or renewals thereof which may be affected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Lender, and Lessee's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Lessee as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Lessee's interest and estate under the Lease (except to the extent that Lessee's right to receive or set-off any monies or obligations owed or to be performed by any of Lender's predecessors-in-interest shall not be enforceable thereafter against Lender or any of Lender's successors-in-interest).

3. (A) After notice is given by Lender that the Security Instrument is in default and that the rentals under the Lease should be paid to Lender, Lessee will attorn to Lender and pay to Lender, or pay in accordance with the directions of Lender, all rentals and other monies due and to become due to Lessor under the Lease or otherwise in respect of the Premises; and such payments shall be made regardless of any right of set-off, counterclaim or other defense which Lessee may have against Lessor, whether as the tenant under the Lease or otherwise.

(B) In addition, if Lender (or its nominee or designee) shall succeed to the rights of Lessor under the Lease through possession or foreclosure action, delivery of a deed or otherwise, or another person purchases the Premises upon or following foreclosure of the Security Instrument, then at the request of Lender (or its nominee or designee) or such purchaser (Lender, its nominees and designees, and such purchaser, each being a "Successor-Lessor"), Lessee shall attorn to and recognize Successor-Lessor as Lessee's landlord under the Lease and shall promptly execute and deliver any instrument that Successor-Lessor may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor-Lessor and Lessee upon all terms, conditions and covenants as are set forth in the Lease, except that Successor-Lessor shall not:

(i) be liable for any previous act or omission of Lessor under the Lease;

(ii) be subject to any off-set, defense or counterclaim which shall have theretofore accrued to Lessee against Lessor;

(iii) be bound by any modification of the Lease or by any previous prepayment of rent or additional rent for more than one (1) month which Lessee might have paid to Lessor, unless such modification or prepayment shall have been expressly approved in writing by Lender; or

(iv) be liable for any security deposited under the Lease unless such security has been physically delivered to Lender;

4. Lessee shall promptly notify Lender of any default by Lessor under the Lease and of any act or omission of Lessor which would give Lessee the right to cancel or terminate the Lease

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or to claim a partial or total eviction. In the event of a default by Lessor under the Lease which would give Lessee the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or to claim a partial or total eviction, or in the event of any other act or omission of Lessor which would give Lessee the right to cancel or terminate the Lease, Lessee shall not exercise such right (i) until Lessee has given written notice of such default, act or omission to Lender and (ii) unless Lender has failed, within sixty (60) days after Lender receives such notice, to cure or remedy the default, act or omission or, if such default, act or omission shall be one which is not reasonably capable of being remedied by Lender within such sixty (60) day period, until a reasonable period for remedying such default, act or omission shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Security Instrument to remedy the same (which reasonable period shall in no event be less than the period to which Lessor would be entitled under the Lease or otherwise, after similar notice, to effect such remedy), provided that Lender shall with due diligence give Lessee written notice of its intention to and shall commence and continue to, remedy such default, act or omission. If Lender cannot reasonably remedy a default, act or omission of Lessor until after Lender obtains possession of the Premises, Lessee may not terminate or cancel the Lease or claim a partial or total eviction by reason of such default, act or omission until the expiration of a reasonable period necessary for the remedy after Lender secures possession of the Premises.

5. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Lessee under the Lease or otherwise.

6. All notices, demands, requests and other communications made hereunder shall be in writing and shall be properly given and deemed delivered on the date of delivery if sent by personal delivery or nationally recognized overnight courier and on the third business day following mailing if sent by certified or registered mail, postage prepaid, return receipt requested, as follows:

If to Lender: Prudential Asset Resources, Inc.
2100 Ross Avenue, Suite 2500
Dallas, Texas 75201
Reference Loan No. 520000038

with a copy to: Prudential Mortgage Capital Company, LLC – Law Department

100 Mulberry Street, 8th Floor
Gateway Center Four
Newark, New Jersey 07102
Attention: General Counsel

If to Lessee: FOAR Preschools, LLC
ATTN: Omar Javed
1299 Twilight Way
Bolingbrook, IL 60490

With copy to: Omar Javed
1299 Twilight Way
Bolingbrook, IL 60490

7. The agreements herein contained shall bind and inure to the benefit of the successors and assigns in interest of the parties hereto and, without limiting such, the agreement of Lender

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shall specifically be binding upon any purchaser of the Property at a sale foreclosing the Security Instrument.

8. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

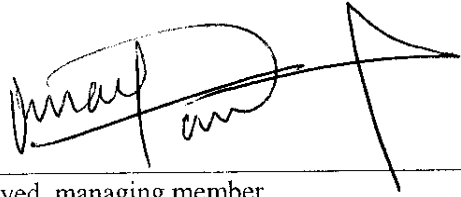
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and delivered in their respective names and on their behalf; and if a corporation, by its officers duly authorized, on the day and year first above written.

LESSEE:

FOAR Preschools, LLC, an Illinois limited liability company



By: _____
Omar Javed, managing member

By: _____
Faiza Sabeen, managing member

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and delivered in their respective names and on their behalf; and if a corporation, by its officers duly authorized, on the day and year first above written.

LESSEE:

FOAR Preschools, LLC, an Illinois limited liability company

By: _____
Omar Javed, managing member

By:  _____
Faiza Sabeen, managing member

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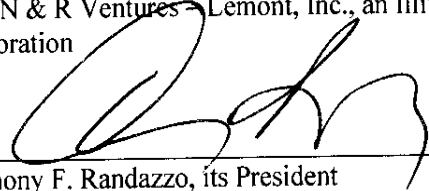
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LESSOR:

LEMONT VILLAGE SQUARE, LLC, an Illinois limited liability company

By: N & R Ventures - Lemont, Inc., an Illinois corporation

By: 
Anthony F. Randazzo, its President

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LENDER:

PRUDENTIAL MORTGAGE CAPITAL
COMPANY, LLC, a Delaware limited liability
company

By: _____

Name: Kirk Schaffer

Title: Vice President

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[signature page to Lemont SNDA – TLE at Lemont LLC]

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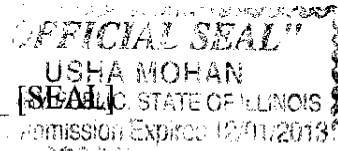
STATE OF ILLINOIS)
COUNTY OF COOK)SS.:

I, Usha Mohan, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Faiza Sabeen, personally known to me to be a managing member of FOAR Preschools, LLC, an Illinois limited liability company, whose name is subscribed to within the Agreement, appeared before me this day in person and acknowledged that he signed and delivered the said Agreement as such managing member of said limited liability company, as his free and voluntary act and as the free and voluntary act and deed of said managing member, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 5th day of November, 2012.



Notary Public



Notary in Cook County
Acting in Cook County
Commission expires: 12/01/2013

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STATE OF Illinois)
)SS.:
COUNTY OF Cook)

I, Donna M. Redman, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Omar Javed, personally known to me to be a managing member of FOAR Preschools, LLC, an Illinois limited liability company, whose name is subscribed to within the Agreement, appeared before me this day in person and acknowledged that he signed and delivered the said Agreement as such managing member of said limited liability company, as his free and voluntary act and as the free and voluntary act and deed of said managing member, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 5th day of November, 2012.

Donna M. Redman [SEAL]
Notary Public

Notary in Cook County

Acting in Cook County

Commission expires: 10/16/2013

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STATE OF Michigan)
COUNTY OF Oakland)SS.:

I, CYNTHIA WILLAERT, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Anthony F. Randazzo, personally known to me to be the President of N & R Ventures - Lemont, Inc., an Illinois limited liability company, which is the Manager of Lemont Village Square, LLC, an Illinois limited liability company, whose name is subscribed to within the Agreement, appeared before me this day in person and acknowledges that he signed and delivered the said Agreement as such Manager of said Company, as his free and voluntary act and as the free and voluntary act and deed of said President, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 5TH day of November, 2012.

Cynthia Willaert [SEAL]
Notary Public

Notary in _____ County

Acting in _____ County

Commission expires: _____

CYNTHIA WILLAERT
Notary Public, State of Michigan
County of Macomb
My Commission Expires Apr. 15, 2013
Acting in the County of Oakland

UNOFFICIAL COPY**CHICAGO TITLE INSURANCE COMPANY****ORDER NUMBER:** 1401 008894179 D2**STREET ADDRESS:** 15434 W. 127TH ST**CITY:** LEMONT**COUNTY:** COOK**TAX NUMBER:** 22-32-200-008-0000; 22-32-200-018; 22-32-200-029; 22-32-200-034;**LEGAL DESCRIPTION:**

22-32-200-048

PARCEL 1:

THE WEST 165 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND, CONVEYED TO THE COUNTY OF COOK, A BODY POLITIC, BY DEED DATED OCTOBER 23, 2003 AND RECORDED DECEMBER 13, 2004 AS DOCUMENT NUMBER 0434839063:

THE SOUTH 5.18 METERS (17 FEET) OF THE NORTH 15.24 METERS (50 FEET) OF THE WEST 50.29 METERS (165 FEET) OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS:

AND ALSO EXCEPT THE FOLLOWING DESCRIBED LAND CONVEYED TO THE COUNTY OF COOK, A BODY POLITIC, BY DEED DATED MAY 2, 2011 AND RECORDED MAY 18, 2011 AS DOCUMENT NUMBER 1113818053:

THE NORTH 50 FEET OF THE WEST 165 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS EXCEPT THE LAND CONVEYED TO THE COUNTY OF COOK, A BODY POLITIC, BY DEED DATED OCTOBER 23, 2003 AND RECORDED DECEMBER 13, 2004 AS DOCUMENT NUMBER 0434839063.

PARCEL 2:

THE SOUTH 123.72 FEET OF THE WEST 208.70 FEET OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 2 IN COMMUNITY BANK OF LEMONT SUBDIVISION OF LOT 1 IN THE PLAT OF CONSOLIDATION OF PART OF LOT 3 IN COUNTY CLERK'S DIVISION OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

THE SOUTH 100 FEET OF THE WEST 225 FEET OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE

(CONTINUED)

UNOFFICIAL COPY**CHICAGO TITLE INSURANCE COMPANY**

ORDER NUMBER: 1401 008894179 D2
STREET ADDRESS: 15434 W. 127TH ST
CITY: LEMONT **COUNTY:** COOK
TAX NUMBER: 22-32-200-008-0000

LEGAL DESCRIPTION:

SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

THE NORTH 1/2 OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6:

THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

EXCEPTING THEREFROM THAT PART OF PARCELS 3, 4, 5 AND 6 FALLING WITHIN, TAKEN OR USED FOR STATE STREET.

PARCEL 7:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 3 AFORESAID, AS CREATED BY THE EASEMENT RECORDED DECEMBER 30, 2004 AS DOCUMENT NUMBER 0436518095, AS AMENDED AND RESTATED BY AGREEMENT RECORDED JULY 11, 2005 AS DOCUMENT NUMBER 0619256131 OVER THOSE PORTIONS OF THE FOLLOWING DESCRIBED LAND AS DESCRIBED IN SAID INSTRUMENT:

LOT 1 IN COMMUNITY BANK OF LEMONT SUBDIVISION OF LOT 1 IN THE PLAT OF CONSOLIDATION OF PART OF LOT 3 IN COUNTY CLERK'S DIVISION OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.