

# UNOFFICIAL COPY



Doc#: 1236331062 Fee: \$88.00  
Karen A. Yarbrough RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/28/2012 04:17 PM Pg: 1 of 9

## SUBORDINATION, NON-DISTURBANCE AND ATTORNEY'S AGREEMENT

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THIS AGREEMENT, made this 21<sup>st</sup> day of December, 2012, by and between CAREMARK, L.L.C., a California limited liability company with offices at c/o CVS Caremark Corporation, ATTN: Property Administration Department, One CVS Drive, Woonsocket, Rhode Island 02895 ("Tenant"), and HSBC REALTY CREDIT CORPORATION (USA), a Delaware corporation, having an address at 452 Fifth Avenue, New York, New York 10018, as administrative agent ("Administrative Agent") for itself in its individual capacity as a lender and other co-lenders that may exist from time to time (collectively, the Lenders)(Administrative Agent, in such capacity as administrative agent for the Lenders, together with its successors and assigns, the "Mortgagee"), and LAKE CENTER INDUSTRIAL, LP, a Delaware limited liability company, having its office at c/o Sentinel Real Estate Corporation, 1251 Avenue of the Americas, 35<sup>th</sup> floor, New York, New York 10020 ("Landlord").

### WITNESSETH:

WHEREAS, Tenant and LCP 1660/1780, L.L.C., a Delaware limited liability company, as landlord, predecessor in interest to Landlord, have entered into a certain lease dated August 17, 2011, as assigned, modified, supplemented or amended by the documents listed on Exhibit A hereto (collectively, the "Lease") covering premises located at 1780 Wall Street, Mt. Prospect, Illinois ("Premises") and as more specifically set forth in the Lease; and

WHEREAS, Mortgagee has made or has agreed to make a mortgage loan in the principal amount of \$10,400,000 (as heretofore and hereafter modified, amended, increased, renewed and extended "Loan") to Landlord to be evidenced by a promissory note secured by, among other security, a certain Mortgage to be recorded in the Official Records of Cook County, Illinois (as heretofore and hereafter modified, amended, increased, renewed and extended "Mortgage") on the Premises (as more particularly described on Exhibit B hereto); and

WHEREAS, the Mortgage, and any other documents or instruments evidencing or securing the Loan, each as heretofore and hereafter modified, amended, increased, renewed and extended, 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, in each case so long as Tenant is not in default (beyond any applicable cure period) in the payment of rent (including, without limitation, fixed rent, additional rent and percentage rent, if any) as set forth in the Lease, or in the payment or performance of any of the terms, covenants or conditions of the Lease or this Agreement on Tenant's part to be performed, (i) 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 (ii) 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 which become effective under the terms of the Lease as in effect on the date of this Agreement or as the Lease may be amended in

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accordance with this Agreement, 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 (including, without limitation, fixed rent, additional rent and percentage rent, if any), or in the payment or performance of any of the terms, covenants or conditions of the Lease or this Agreement 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 by reason of foreclosure or other proceedings brought by it, or by deed in lieu of foreclosure or otherwise, or if Mortgagee takes possession of the Premises pursuant to any provisions of the Loan Documents (the date of any of the foregoing being referred to herein as the "Mortgagee Succession Date"), then: (i) Mortgagee and Tenant shall be directly bound to each other under all 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 under the terms of the Lease as in effect on the date of this Agreement or as the Lease may be amended in accordance with this Agreement, with the same force and effect as if Mortgagee were the Landlord under the Lease; and (ii) Tenant does hereby attorn to Mortgagee as its landlord, said attornment to be effective and self-operative (without the execution of any further instruments), immediately upon Mortgagee 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 that it has succeeded to the interests of the Landlord under the Lease. The respective rights and obligations of Tenant and Mortgagee 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 succession to the interests of the Landlord under the Lease, and Tenant shall have the same remedies against Mortgagee for the breach of any agreement contained in the Lease that Tenant might have under the Lease against Landlord if Mortgagee had not succeeded to the interest of Landlord; provided, however, that Mortgagee 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 during a period during which Mortgagee is receiving rent from Tenant pursuant to Paragraph 5 hereof, but in such case only for the loss, damage, cost or expense which arise from such act or omission from and after the Mortgagee Succession Date; or

(b) subject to any defenses which Tenant might have against any prior landlord (including Landlord) prior to the Mortgagee Succession Date; or

(c) bound by any fixed rent which Tenant might have paid for more than the current month; or

(d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is in an escrow or other fund available to Mortgagee; or

(e) bound by any amendment or modification or waiver of any provision of the Lease made without the consent of the Mortgagee, which would reduce the lease term, rents payable, or square footage, or extend the lease term, or otherwise make a material change in the terms of the lease. Said consent shall be deemed given if a response by Mortgagee is not received within thirty (30) days of Landlord's written request containing an address for making a response and the following legend in solid capital letters: UNDER THE TERMS OF THE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT DATED December 21, 2012, YOUR FAILURE TO RESPOND TO THIS REQUEST WITHIN 30 DAYS WILL CONSTITUTE APPROVAL OF THIS REQUEST; or

(f) bound by any obligation under the Lease to complete work within the Premises, but this

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subparagraph shall not be construed to prevent Tenant from performing any such work and exercising any right of setoff under the Lease or applicable law for the cost of doing so, or from exercising any right of termination under the Lease based on the failure of such work to be completed.

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 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. (a) 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 which would give Tenant the right to cancel or terminate the Lease; and Tenant will grant to Mortgagee up to 45 days or a reasonable time (not to exceed 45 days) in which to cure Landlord's default, or such longer period of time (which time shall be at least the period of time as is 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 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.

(b) Mortgagee shall use best efforts to copy Tenant on any notice of Mortgagee's default under the Loan Documents at the same time that Mortgagee shall serve a Notice of Default on Mortgagee.

7. This Agreement may not be modified or amended, except by a writing signed 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. Except as provided in the Lease, Tenant hereby waives any priority it may have over Mortgagee with respect to any share of any condemnation award for a taking 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.

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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 obligation, 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. Further, Mortgagee shall have no obligation or liability to Tenant with respect to liabilities or obligations accruing under the Lease or this Agreement from and after the date as of which Mortgagee has conveyed its interest in the Premises.

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 and inure to the benefit of any successor to Mortgagee's interest as Landlord of the Lease.

[Signature Pages to Follow]

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

WITNESS:

TENANT:

Shannon MacLeod  
Shannon MacLeod

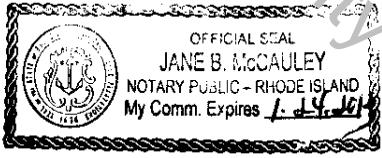
CAREMARK, L.L.C.  
By: Sheila C. Perkins  
Sheila C. Perkins  
Manager of Lease Administration

STATE OF RHODE ISLAND     )  
   ) ss:  
COUNTY OF PROVIDENCE     )

On this 3 day of December, 2012, before me personally appeared Sheila C. Perkins, who, being by me duly sworn, did depose and say that she resides in Riverside, Rhode Island; that she is Manager of Lease Administration of CAREMARK, L.L.C., the limited liability company described in and which executed the above instrument and that she executed this instrument on behalf of said limited liability company and that she had authority to do so.

Jane B. McCauley  
NOTARY PUBLIC

My commission expires:



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WITNESS:

MORTGAGEE:

[Signature]

HSBC REALTY CREDIT CORPORATION (USA),  
a Delaware corporation

By: Barbara Isaacman

Name: Barbara E. Isaacman

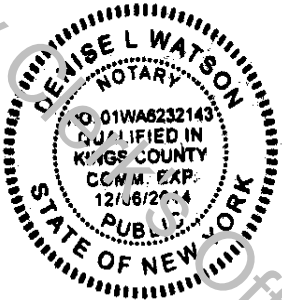
Title: Vice President

Property

STATE OF New York  
COUNTY OF New York

On this 7th day of December, 2012, before me personally appeared Barbara E. Isaacman, who, being by me duly sworn, did depose and say that she resides in New York, New York; that she is Vice President of HSBC Realty Credit Corporation the corporation described in and which executed the above instrument and that she executed this instrument on behalf of said corporation and that she had authority to do so.

Denise L. Watson  
NOTARY PUBLIC



Office



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WITNESS:

LANDLORD:

R. Jagan  
Radica Jagan

Lake Center Industrial, LP,  
a Delaware limited partnership  
By: Lake Center GP, LLC,  
a Delaware limited liability company  
its General Partner

By: Contrefort Manager, Inc.,  
a Delaware corporation,  
its Manager

By: B Kraut  
Name: Brian Kraut  
Title: Vice President

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STATE OF New York )  
COUNTY OF New York ) ss:

On this 11th day of, 2012, before me personally appeared Brian Kraut, who, being by me duly sworn, did depose and say that she/he resides in Berkeley Heights, New Jersey; that she/he is Vice President of Contrefort Manager, Inc., the Manager of Lake Center\* described in and which executed the above instrument and that she/he executed this instrument on behalf of said corporation and that she/he had authority to do so.

Lorraine Michel  
NOTARY PUBLIC  
LORRAINE MICHELS  
Notary Public, State of New York  
No. 52-4830738  
Qualified in Suffolk County  
Commission Expires 3/29/2014

\* GP, LLC, the general partner of  
Lake Center Industrial, LP,

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## EXHIBIT A

Assignment and Assumption of Lease and Other Property Rights, by and between LCP 1660/1780, L.L.C., a Delaware limited liability company, as assignor, and Lake Center Industrial, LP, a Delaware limited partnership, as assignee, dated December 21, 2012.

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## EXHIBIT B

LOT 1 IN LAKE CENTER PLAZA NO. 3, A SUBDIVISION OF LOTS 3 TO 7 IN LAKE CENTER PLAZA, A RESUBDIVISION OF PART OF LOT 4 IN LINNEMAN'S DIVISION AND OF LOT 2 IN LAKE CENTER PLAZA RESUBDIVISION 2 IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT OF RESUBDIVISION RECORDED JULY 16, 2009 AS DOCUMENT 0819145106 IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 08-23-203-041-0000.

Common Address: 1780 Wall Street, Mount Prospect, Illinois 60056.

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