

# UNOFFICIAL COPY

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Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 02/19/2014 04:10 PM Pg: 1 of 9

After Recording Return to:

Lea MADRY  
Chapman & Cutler LLP  
111 W. MONROE  
CHICAGO, IL 60603

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE ONLY

## MORTGAGEE'S NON-DISTURBANCE AGREEMENT AND LESSEE'S SUBORDINATION AND AGREEMENT TO ATTORN

THIS AGREEMENT, made this 22nd day of November, 2013, by and between [Chicago Community Loan Fund], of 29 E. Madison Street, Suite 1700, Chicago, IL 60602 (hereinafter referred to as "**Mortgagee**") and Primo Center for Women and Children, a not-for-profit corporation, having its principal office and place of business located at 4245 West Washington Street, Chicago, IL 60624 (hereinafter referred to as "**Lessee**").

WHEREAS, Lessee has entered into a certain lease, dated November 22, 2013, between Lessee and Pilgrim Development Corporation, as landlord ("**Landlord**"), covering certain space (hereinafter referred to as the "**Demised Premises**") at 4245 West Washington Boulevard, Chicago, Illinois and located on the property described on Schedule I attached hereto and made a part hereof (the said lease being hereinafter referred to as the "**Lease**"); and

WHEREAS, Mortgagee is or will be the holder of a certain Mortgage and Security Agreement with Assignment of Rents dated as of November 22, 2013, executed by Landlord in favor of Mortgagee to be recorded in the Office of the Recorder of Deeds of Cook County, Illinois, which covers land and improvements, including the building and land of which the Demised Premised is a part (hereinafter the "**Mortgage**"); and

WHEREAS, Lessee has requested that Mortgagee agree not to disturb Lessee's possessory rights in the Demised Premises in the event Mortgagee should foreclose the Mortgage provided that the Lessee is not in default under the Lease and provided that the Lessee attorns to Mortgagee or the purchaser at the foreclosure sale; and

WHEREAS, Lessee and Mortgagee are willing to so agree on the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein and TEN DOLLARS (\$10.00) and other good value consideration each to the other in had paid, receipt of

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which is hereby acknowledged, Mortgagee and Lessee hereby agree as follows:

1. **Subordination**. The Lease is and shall be subject and subordinate in all respects to the Mortgage and to any renewal, modification, replacement or extension of the same.
2. **Non-Disturbance and Attornment**.
  - a. **No Exercise of Security Interest Against Tenant**. So long as Lessee is not in default under the Lease beyond any applicable notice, grace or cure periods (an "***Event of Default***"), Mortgagee shall not name or join Lessee as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage unless applicable law requires Lessee to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.
  - b. **Non-Disturbance and Attornment**. If an Event of Default by Lessee is not then continuing, then, when Successor Landlord takes title to the Property: (i) Successor Landlord shall not terminate or disturb Lessee's possession of the Demised Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (ii) Successor Landlord shall be bound to Lessee under all the terms and conditions of the Lease (except as provided in this Agreement); (iii) Lessee shall recognize and attorn to Successor Landlord as Lessee's direct landlord under the Lease as affected by this Agreement; and (iv) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Lessee. Lessee acknowledges notice of the Mortgage. Lessee agrees to continue making payments of Rent and other amounts owed by Tenant under the Lease to the Landlord and to otherwise recognize the rights of Landlord under the Lease until Mortgagee notifies Lessee in writing of an event of default under the Mortgage and demands that Lessee pay its rent and all other amounts owed by Lessee under the Lease to Mortgagee, and after receipt of such notice Lessee agrees thereafter to make all such payments to Mortgagee as directed by Mortgagee, without any further inquiry on the part of Lessee, and Landlord consents to the foregoing.

For purposes of the foregoing, the following terms shall have the following meanings:

i. A "***Foreclosure Event***" means: (i) foreclosure under the Mortgage; (ii) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Mortgage, as a result of which a Successor Landlord becomes owner of the Demised Premises; or (iii) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in the Demised Premises in lieu of any of the foregoing.

ii. A "***Successor Landlord***" means any party that becomes owner of the Demised Premises as the result of a Foreclosure Event.

3. **Protection of Successor Landlord**. Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

- (a) any previous act or omission of Landlord and any other party that was landlord under

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the Lease at any time before the occurrence of any attornment under this Agreement (a "**Former Landlord**"),

(b) any offset which shall theretofore have accrued to Lessee against a Former Landlord, except to the extent the circumstances giving rise to any offset continue after the date Successor Landlord takes title to the Demised Premises,

(c) the return of any security deposited under the Lease unless such security has been physically delivered to Mortgagee,

(d) any previous prepayment of fixed rent for a period greater than one (1) month, unless such prepayment shall have been expressly approved in writing by Mortgagee,

(e) any modification of the Lease entered into prior to the occurrence of any attornment under this Agreement, unless such modification shall have been expressly approved in writing by Mortgagee, or

(f) any obligation with respect to the erection and completion of any improvements for Lessee's use and occupancy.

4. **Further Documentation.** Lessee will upon request by Mortgagee, or any Successor Landlord, execute a written agreement whereunder Lessee does attorn to Mortgagee or any such subsequent owner and affirm Lessee's obligations under the Lease.

5. **Notice to Mortgagee.** Lessee from and after the date hereof shall send a copy of any notice of default under the Lease to Mortgagee at the same time such notice or statement is sent to the landlord under the Lease.

6. **Mortgagee's Right to Cure.** Lessee hereby agrees that from and after the date hereof in the event of any act or omission by landlord under the Lease (other than any such act or omission which is not capable of being remedied by landlord under the Lease within a reasonable period) which would give Lessee the right, either immediately or after the lapse of the period of time, to terminate the Lease, or to claim a partial or total eviction, Lessee will not exercise any such right (i) until it has given written notice of such act or omission to the Mortgagee by delivering such notice of such act or omission, by registered mail, return receipt requested, addressed to Mortgagee, at the Mortgagee's address as given herein (Attention: \_\_\_\_\_), or at the last address of Mortgagee furnished to Lessee in writing and (ii) and such act or omission is not cured or remedied within thirty (30) days following the giving of such notice. Notwithstanding the foregoing and for the avoidance of doubt, (X) nothing in the foregoing shall affect the right of Lessee to any abatement of rent or right of offset against rent that has accrued to Lessee under the Lease or at law or in equity, and (Y) Mortgagee shall have no obligation to cure any such defaults, other than defaults that continue after the date that Mortgagee become a Successor Landlord.

7. **Notices.** Any notice, demand, request, consent, approval or disapproval (each, a "**Notice**") required or desired to be given under this Agreement shall be in writing and given by (i) certified mail, postage prepaid and return receipt requested, (ii) personal delivery or (iii) Federal Express or a similar nationwide overnight delivery service providing a receipt for delivery. Notices may not be given by facsimile, telegram, telex or e mail. The date of receipt of any Notice shall be deemed to be the

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date upon which delivery is actually made by one of the methods described in this Section 7 (or the date such delivery is first attempted if said delivery is refused or rejected). If a Notice is received or deemed received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day. All notices, demands, requests, consents, approvals or disapprovals shall be addressed as follows:

If to Mortgagee, at: Chicago Community Loan Fund  
2 East Madison Street, Suite 1700  
Chicago, IL 60602  
Attention: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to Lessee, at: Primo Center for Women and Children  
4245 West Washington Boulevard  
Chicago, IL 60624  
Attention: Christine Achre

With a copy to: DLA Piper LLP (US)  
203 North LaSalle Street, Suite 1900  
Chicago, IL 60601  
Attention: James M. Phipps, Esq.

Either party may change its address by giving reasonable advance written Notice of its new address in accordance with the methods described in this Section 7.

8. **Miscellaneous.**

(a) Nothing contained in this agreement shall in any way impair or affect the lien created by the Mortgage, except as specifically set forth herein.

(b) No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

(c) This Agreement shall inure to the benefit of the parties hereto, their successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of the Mortgagee, all obligations and liabilities of the Mortgagee under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom the Mortgagee's interest is assigned or transferred; and provided further that the interest of Lessee under this Agreement may not be assigned or transferred.

(d) Lessee agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

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(e) Lessee acknowledges that it has notice that the Lease and the rent and all sums due thereunder have been assigned to the Mortgagee as part of the security for the obligations secured by the Mortgage.

(f) This Agreement may be executed in any number of counterparts and by separate parties hereto on separate counterparts, all such counterparts taken together to constitute but on and the same instrument.

(g) The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the laws of the State of Illinois

IN WITNESS WHEREOF, the parties hereto have respectively signed and sealed this Agreement as of the day and year first above written.

CHICAGO COMMUNITY LOAN FUND

By *C. J. Salinas*  
Name \_\_\_\_\_  
Title \_\_\_\_\_

PRIMO CENTER FOR WOMEN AND CHILDREN

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

PILGRIM DEVELOPMENT CORPORATION

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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(e) Lessee acknowledges that it has notice that the Lease and the rent and all sums due thereunder have been assigned to the Mortgagee as part of the security for the obligations secured by the Mortgage.

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IN WITNESS WHEREOF, the parties hereto have respectively signed and sealed this Agreement as of the day and year first above written.

CHICAGO COMMUNITY LOAN FUND

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

PRIMO CENTER FOR WOMEN AND CHILDREN

By Christine Achre  
Name Christine Achre  
Title CEO

PILGRIM DEVELOPMENT CORPORATION

By Warren Ritey  
Name Warren Ritey  
Title SECRETARY

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 22<sup>ND</sup> day of November, 2013 by CALVIN L. Holmes, the President of CHICAGO COMMUNITY LOAN FUND, as Mortgagee. Given under my hand and Notarial Seal this 22<sup>ND</sup> day of November, 2013.

(NOTARY SEAL)

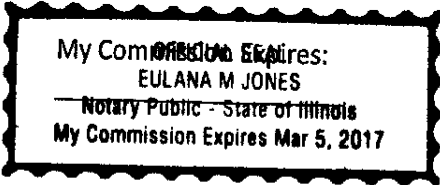


Evelyn D. Turner  
Notary Public  
Evelyn D. Turner  
(Type or Print Name)

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 22<sup>ND</sup> day of November, 2013 by CHRISTINE ACHAS, the CEO OF PRIMO CENTER FOR WOMEN AND CHILDREN, as Lessee. Given under my hand and Notarial Seal this 22<sup>ND</sup> day of November, 2013.

(NOTARY SEAL)

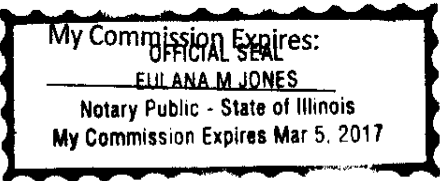


Eulana M. Jones  
Notary Public  
EULANA M. JONES  
(Type or Print Name)

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 22<sup>ND</sup> day of November, 2013 by WARREN KILGAT, the SECRETARY of PILGRIM DEVELOPMENT CORPORATION, as Landlord. Given under my hand and Notarial Seal this 22<sup>ND</sup> day of November, 2013.

(NOTARY SEAL)



Eulana M. Jones  
Notary Public  
EULANA M. JONES  
(Type or Print Name)

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## SCHEDULE I

### LEGAL DESCRIPTION

#### PARCEL 1:

LOTS 15, 16 AND 17 IN BLOCK 35 IN WEST CHICAGO LAND CO'S SUBDIVISION OF THE SOUTH 1/2 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address	4241 W. Washington Blvd. Chicago IL 60624
P.I.N. No.	16-10-423-003-0000

#### PARCEL 2:

LOT 18 AND THE EAST 1 1/2 INCHES OF LOT 19 IN BLOCK 35 IN WEST CHICAGO LAND CO'S SUBDIVISION OF THE SOUTH 1/2 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

Property Address	4245 W. Washington Blvd. Chicago IL 60624
P.I.N. No.	16-10-423-002-0000



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SCHEDULE I

(PAGE 2)

PARCEL 3

## LEGAL DESCRIPTION

LOT 14 IN BLOCK 35 IN THE SUBDIVISION OF THE SOUTH 1/2 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

Property Address

4233 W. Washington Blvd.  
Chicago, IL 60624

P.I.N. No.

16-10-423-004-0000