

THIS DOCUMENT WAS  
PREPARED BY AND WHEN  
RECORDED RETURN BY  
MAIL TO:

Judith O'Connell  
Fremont Investment & Loan  
303 W. Madison Street  
Chicago, Illinois 60606  
Attention: Commercial Real Estate  
Loan No.: 950113670

*METROPOLITAN FAMILY SERVICES FINA*

**NONDISTURBANCE AND ATTORNMENT AGREEMENT**

*STUB BUILDING LIMITED PARTNERSHIP A*

THIS NONDISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of July 7, 1999, by and among \_\_\_\_\_, an Illinois limited partnership, whose address is c/o BriJus Property Co., 155 North Wacker Drive, Chicago, Illinois 60606, successor by assignment from Chicago Title and Trust Company not personally but as Trustee under Trust Agreement dated June 30, 1983 and known as Trust No. 1083673 ("Landlord"), UNITED CHARITIES OF CHICAGO, INC., an Illinois not-for-profit corporation ("Tenant"), whose address is 14 East Jackson Street, Chicago, Illinois 60606, and FREMONT INVESTMENT & LOAN, a California industrial loan association ("Lender"), whose address is 175 N. Riverview Drive, Anaheim, California 92808, Attn: Commercial Real Estate Department, Loan No. 950113670, with respect to the following Recitals:

**RECITALS**

*99020003 / STR / EDK*

A. Landlord is the owner of the real property described on Exhibit A attached hereto, together with the improvements now or hereafter located thereon (collectively, the "Project").

B. Landlord and Lender are the parties to that certain Loan and Security Agreement of even date herewith (the "Loan Agreement"), pursuant to which Lender has agreed to loan to Landlord (i) an amount up to Twenty-One Million Nine Hundred Forty Thousand Dollars (\$21,940,000.00) (the "Bridge Loan") and (ii) an amount up to Twenty Three Million Dollars (\$23,000,000.00) (the "Term Loan") (the Bridge Loan and Term Loan are collectively referred to as the "Loan"). The Loan is presently evidenced by that certain Secured Promissory Note (Bridge Loan) of even date herewith in the original principal amount of \$21,940,000.00, executed by Landlord in favor of Lender and upon satisfaction of the Term Loan conditions will be evidenced by that certain Secured Promissory Note (Term Loan) in the original principal amount of \$23,000,000.00 (collectively, the "Notes"). The Notes are secured, inter alia, by that certain Mortgage and Fixture Filing of even date herewith executed by Landlord in favor of Lender (the "Mortgage") encumbering the Project, recorded concurrently herewith in the Official Records of Cook County, Illinois (the "Official Records"), and by that certain Assignment of Rents and Leases of even date herewith executed by Landlord in favor of Lender (the "Assignment of Rents") encumbering the Project, recorded concurrently herewith in the Official Records. The Loan Agreement, the Notes, the Mortgage, the Assignment of Rents and all other documents securing, or executed in connection with, the Loan, together with all renewals, substitutions, extensions, modifications or replacements thereof, are collectively referred to herein as the "Loan Documents."

C. Tenant and Landlord have entered into that certain Amendment and Restatement of Lease dated November 2, 1990 (the "Lease"), pursuant to which Landlord leased to Tenant a portion of the Project more particularly described in the Lease (the "Leased Premises").

D. Lender has required the execution and delivery of this Agreement as a condition precedent to the closing of the Loan.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Loan Disbursements.

Tenant agrees and acknowledges that in making disbursements of the Loan, Lender is under no obligation or duty to, nor has Lender represented that it will, see to the application of the Loan proceeds by the person or persons to whom Lender disburses the Loan proceeds, and any application or use of the Loan proceeds for purposes other than those provided for in the Loan Documents shall not defeat in whole or in part the agreements set forth herein.

2. Nondisturbance and Attornment.

If the interest of Landlord under the Lease is transferred by reason of any foreclosure of the Mortgage or by deed in lieu or in aid thereof, Purchaser (as hereinafter defined) shall be bound to Tenant, and Tenant shall be bound to Purchaser, under all of the terms, covenants and conditions of the Lease (except as provided in Section 5 hereof) for the balance of the term thereof, with the same force and effect as if Purchaser were the original landlord under the Lease. Tenant does hereby attorn to Purchaser as the landlord under the Lease, which attornment shall be effective and self-operative without the execution of any further instruments upon Purchaser's succeeding to the interest of the landlord under the Lease. Tenant expressly acknowledges and agrees that a default by Tenant under the Lease, after the expiration of any applicable cure periods specifically provided for under the Lease, (a) shall terminate Lender's nondisturbance agreements set forth herein only at Lender's election in its sole discretion, and (b) shall not terminate Tenant's attornment agreement or any other agreements by Tenant set forth herein. Without limiting the generality of this Section 2, within ten (10) days after the request of Landlord, Lender or any Purchaser, Tenant shall execute and deliver such documents as are reasonably requested by such party to reflect such attornment. Within twenty (20) days after the request of any Purchaser, Tenant shall enter into a new lease of the Leased Premises with such Purchaser for the balance of the then remaining term of the Lease and upon the same terms and conditions as are then contained in the Lease. As used herein, "Purchaser" shall mean a transferee (including, without limitation, Lender and its affiliates and subsidiaries) which acquires the interest of Landlord in the Leased Premises through a foreclosure of the Mortgage or a deed in lieu or in aid thereof, and its successors and assigns.

3. Tenant Agreements.

Tenant agrees that:

A. Tenant shall send a copy of any notice of a default by Landlord under the Lease to Lender at the same time such notice is sent to Landlord; and

B. without Lender's prior written consent, Tenant shall not (i) pay any rent (however denominated) or other charges under the Lease more than one (1) month in advance, (ii) cancel,

terminate or surrender the Lease, except at the normal expiration of the Lease term or as expressly provided in the Lease or pursuant to applicable law, or (iii) enter into any amendment or modification of the Lease. Lender's consent to any amendment or modification of the Lease shall not be unreasonably withheld or delayed. Any amendment or modification entered into without Lender's consent shall not be valid; and

C. Upon the occurrence of any event of default by Landlord under the Loan Documents and the expiration of any applicable cure periods expressly provided for under the Loan Documents, Lender, at all times, independent of Landlord, shall have the standing and right to enforce, by injunction or otherwise, all or any provisions in the Lease as though Lender originally was a party thereto.

Tenant further agrees that any right of first offer, right of first refusal or purchase option set forth in the Lease or in any other agreement shall not apply to, or be exercisable by Tenant with respect to, the transfer of the Project and/or the Leased Premises through the foreclosure of the Mortgage or a deed in lieu or in aid thereof or to any subsequent transfer by Purchaser.

#### 4. Assignment of Rents.

Tenant agrees to recognize the assignment from Landlord to Lender of the Lease and the amounts payable thereunder pursuant to the Mortgage and the Assignment of Rents and, in the event of any default by Landlord under the Loan Documents and the expiration of any applicable cure period expressly set forth therein, Tenant shall pay to Lender, as such assignee, the rents and other amounts which are or become due under the Lease from and after the date on which Lender gives Tenant notice that such rent and other amounts are to be paid to Lender pursuant to the Mortgage or the Assignment of Rents. In complying with the provisions of this Section 4, Tenant shall be entitled to rely solely upon the notices given by Lender pursuant to the Mortgage or the Assignment of Rents and Landlord hereby indemnifies and agrees to defend and hold Tenant harmless from and against any and all expenses, loss, claims, damage or liability arising out of Tenant's compliance with such notice or performance of the obligations under the Lease by the Tenant made in good faith in reliance on and pursuant to such notice. Tenant shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with the provisions hereof. Any dispute between Lender (or any other Purchaser) and Landlord as to the existence or nature of a default by Landlord under the terms of the Loan Documents or with respect to the foreclosure of the Mortgage, shall be dealt with and adjusted solely between Lender (or such other Purchaser) and Landlord, and Tenant shall not be made a party thereto (unless joinder is required by law).

#### 5. Lender's Obligations.

Nothing in this Agreement and no action taken by Lender to enforce any provision in the Lease shall be deemed or construed to constitute an agreement by Lender to perform or assume any covenant of Landlord as landlord under the Lease unless and until Lender obtains title to the Leased Premises by foreclosure of the Deed of Trust or a deed in lieu or in aid thereof. Without limiting any of Tenant's rights against Landlord under the Lease, in the event Lender acquires title to the Leased Premises, Lender shall:

A. only be liable for any damage or other relief attributable to any act or omission accruing during Lender's period of ownership of the Leased Premises, regardless of whether such acts or omissions commenced prior to such period of ownership. For example, if the Lease provides that the failure of the Landlord to repair a hole in the roof entitles the Tenant to offset rent for the number of days that the roof is not repaired, and if the hole in the roof occurred 60 days prior to Lender's acquisition of title and was not repaired for another 30 days thereafter, Tenant would only be entitled

to offset against its rental obligations owed to Lender 30 days rental and would retain a claim against Landlord for 60 days rental;

B. only be responsible for representations, warranties and covenants of Landlord to the extent that such representations, warranties and covenants apply to the Project and relate to the operation of the Project during Lender's period of ownership of the Leased Premises;

C. be liable only for any security deposit actually delivered to Lender; and

D. have its obligations and liabilities limited to the then interest, if any, of Lender in the Project, without consideration of any mortgage liens placed on the Project by Lender. Tenant shall look exclusively to such interest of Lender, if any, in the Project for the payment and discharge of any obligations imposed upon Lender hereunder or under the Lease and Tenant releases Lender from any other liability hereunder and under the Lease.

Nothing contained in this Section shall be deemed to limit or affect Tenant's claims against Landlord for any breaches of the Landlord's obligations under the Lease, or for any breaches of Landlord's representations, warranties and covenants under the Lease, or for return of any security deposit under the Lease, and no transfer of the Project to Lender shall release Landlord from any of its Lease obligations, notwithstanding anything to the contrary in the Lease.

6. Estoppel Certificate

Tenant agrees, from time to time, within ten (10) days after Lender's request, to execute and deliver to Lender or Lender's designee, any estoppel certificate reasonably requested by Lender, stating that the Lease is in full force and effect, the date to which rent has been paid, that Landlord is not in default under the Lease (or specifying in detail the nature of Landlord's default), and such other matters relating to the Lease as may be reasonably requested by Lender.

7. No Merger

The parties agree that, without Lender's prior written consent, Landlord's estate in and to the Project and the leasehold estate created by the Lease shall not merge but shall remain separate and distinct, notwithstanding the union of such estates in Landlord, Tenant or any third party by purchase, assignment or otherwise.

8. Entire Agreement

This Agreement shall be the whole and only agreement with regard to the matters set forth herein, and shall supersede and cancel any prior agreements with respect thereto, including, without limitation, any provisions contained in the Lease relating thereto.

9. Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document, which may be recorded.

**10. Modifications, Successors and Assigns.**

This Agreement may only be modified in writing signed by all of the parties hereto or their respective successors in interest. This Agreement, including without limitation, the provisions of Section 5, shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

**11. Attorneys' Fees.**

If any lawsuit or other proceeding is commenced which arises out of, or which relates to this Agreement, including any alleged tort action, the prevailing party shall be entitled to recover from each other party such sums as the court or other party presiding over such action or proceeding may adjudge to be reasonable attorneys' fees and costs in the action or proceeding, in addition to costs and expenses otherwise allowed by law. Any such attorneys' fees and costs incurred by any party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment and shall survive and not be merged into any such judgment. The obligation to pay such attorneys' fees and costs is intended to be severable from the other provisions of this Agreement.

**12. Governing Law.**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois.

**13. Notices.**

Any notice, or other document or demand required or permitted under this Agreement shall be in writing addressed to the appropriate address set forth above and shall be deemed delivered on the earliest of (a) actual receipt, (b) the next business day after the date when sent by recognized overnight courier, or (c) the second business day after the date when sent by registered or certified mail, postage prepaid. Any party may, from time to time, change the address at which such written notices or other documents or demands are to be sent, by giving the other parties written notice of such change in the manner hereinabove provided.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

"Lender"

FREMONT INVESTMENT & LOAN, a California industrial loan association

By: [Signature]  
Its: Vice President

"Tenant"

*METROPOLITAN FAMILY SERVICES FUND*  
UNITED CHARITIES OF CHICAGO, INC.,  
an Illinois not-for-profit corporation

By: [Signature]  
Its: REPRESENTATIVE

Attest:

By: [Signature]  
Its: Assistant Secretary

Hub Buildings, Limited Partnership  
"Landlord"  
[Signature], an Illinois limited partnership,  
its sole general partner

By: State Cite, LLC, a Delaware limited liability company,  
its sole general partner

By: [Signature]  
Steven G. Levin, its sole manager and ~~sole member~~



# UNOFFICIAL COPY

99780900

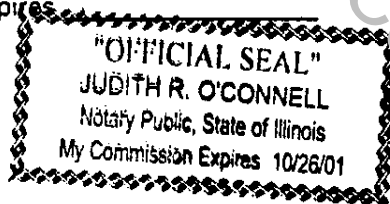
STATE OF ILLINOIS    )  
                                  ) ss.  
COUNTY OF COOK    )

I, Judith R. O'Connell, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Scott S. Manlin personally known to me to be the Vice President of Fremont Investment & Loan, a California industrial loan association, and 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 severally acknowledged that as such Vice President, he signed and delivered the said instrument and caused the corporate seal of said association be affixed thereto, pursuant to authority given by the Board of Directors of said association as their free and voluntary act and deed of said association, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 13<sup>th</sup> day of July, 1999.

Judith R. O'Connell  
Notary Public

Commission expires



# UNOFFICIAL COPY

STATE OF ILLINOIS )  
                                  ) ss.  
COUNTY OF COOK )

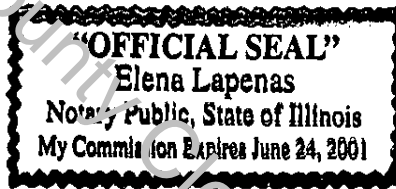
*Metropolitan Family Services 997819110*

I, Elena Lapenas, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Denis Hurley personally known to me to be the Treasurer President of United Charities of Chicago, Inc., an Illinois not-for-profit corporation, and Barbara Winkelmann personally known to me to be the Assistant Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Treasurer President and Assistant Secretary, they signed and delivered the said instrument and caused the corporate seal of said corporation be affixed thereto, pursuant to authority given by the Board of Directors of said corporation as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 8 day of July, 1999.

Elena Lapenas  
Notary Public

Commission expires \_\_\_\_\_





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STATE OF ILLINOIS )  
                                  ) ss.  
COUNTY OF COOK )

997819110

ALAN H. GARFIELD

I, ~~STEVEN LEVIN~~, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that STEVEN LEVIN personally known to me to be the sole manager of State Cite, LLC, a Delaware limited liability company, the sole general partner of Hub Buildings Limited Partnership, an Illinois limited partnership and 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 severally acknowledged that as such manager, he signed and delivered the said instrument and caused the seal of said limited liability company be affixed thereto for and on behalf of said limited partnership, pursuant to authority given by the members of said limited liability company as their free and voluntary act and as the free and voluntary act and deed of said limited liability company for and on behalf of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 16 day of July, 1999.



Notary Public

Commission expires \_\_\_\_\_



# UNOFFICIAL COPY

## EXHIBIT A

997809110

### Legal Description of the Project

That certain real property located in the City of Chicago, County of Cook, State of Illinois, having a street address of 14 East Jackson Boulevard, more particularly described as follows:

#### Parcel 1:

All that part of Lot 10 in Block 6 in Fractional Section 15, addition to Chicago in Township 39 North, Range 14 East of the Third Principal Meridian, bounded by a line described as follows: beginning at a point on the South line of said Lot 10, 27 feet East of the Southwest corner thereof as originally laid out, said point being at the present Northeast corner of State Street and Jackson Boulevard and running thence North along the East line of State Street, 58 feet 3-1/2 inches to the center of the party wall and running thence Easterly along the center of the said wall, 73 feet to a point 57 feet 10 inches North of the South line of said Lot 10, running thence South parallel with the West line of said lot, 57 feet 10 inches to the South line of said lot, being also the North line of Jackson Boulevard, and running thence West 73 feet along the South line of the said lot, to the point of beginning, East of the Third Principal Meridian in Cook County, Illinois.

And

#### Parcel 2:

That part of Lots 7 and 10 in Block 6 in Fractional Section 15 Addition to Chicago in Township 39 North, Range 14 East of the Third Principal Meridian, bounded and described as follows: Commencing at a point on the North side of Jackson Boulevard, 73 feet East of the Northeast corner of State Street and Jackson Boulevard, as now laid out and occupied at the South West corner of the building known as Numbers 49, 51, 53 Jackson Boulevard; thence running North through and upon the center line of the West wall of said building on a line parallel with the East line of State Street, 57 feet 10 inches to a corner where said wall turns West; thence running Westerly along the center line of the South wall of the store building known as Number 233 State Street; thence North along the East side of State Street, 22.35 feet to the Southwest corner of the North 36 feet of the South 1/2 of Lot 7, aforesaid which said corner is the Northwest corner of said store building known as 233 State Street; thence running Easterly 144 11/12 feet along the center line of the North wall of said building No. 233 State Street and numbers 49, 51 and 53 Jackson Boulevard and the Southeast corner of said Lot 10 thence West along the North line of Jackson Boulevard 71 feet 11 inches more or less, to the point of beginning, East of the Third Principal Meridian, in Cook County, Illinois.

And

#### Parcel 3:

The North 36 feet of the South 1/2 (except those portions thereof taken for the widening of State Street and opening of alley) of Lot 7 in Block 6 in Fractional Section 15 Addition to Chicago in Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Tax Identification Number: 17-15-104-007; 17-15-104-008; and 17-15-104-009, (Volume 510).