

# UNOFFICIAL COPY

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*This instrument prepared by:*  
Michael D Miselman, Esq.  
131 South Dearborn Street  
Suite 2400  
Chicago, IL 60603

*After recording return to:*  
James A. Schraidt, Esq.  
Scott & Kraus, LLC  
150 South Wacker Drive  
Suite 2900  
Chicago, Illinois 60606



Doc#: 1022908322 Fee: \$74.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 08/17/2010 02:31 PM Pg: 1 of 6

*This space is reserved for use by the Recorder.*

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is hereby made and entered into as of this \_\_\_\_ day of October, 2009, by and between INLAND BANK AND TRUST, an Illinois banking corporation (the "Lender"), and Odyssey HealthCare Operating A, LP, a Delaware limited partnership, d/b/a Odyssey HealthCare of Chicago, (the "Tenant").

### RECITALS:

WHEREAS, 85 ALGONQUIN L.L.C., an Illinois limited liability company (the "Landlord"), has given and made, to and for the benefit of the Lender, that certain Mortgage and Security Agreement (the "Mortgage") dated as of August 31, 2009, which Mortgage secures an indebtedness in the original principal amount of Six Million Four Hundred Forty Thousand and 00/100 Dollars (\$6,440,000.00), and which constitutes a lien on that certain parcel of real property (the "Property") commonly known as 85 W. Algonquin Road, Arlington Heights, Illinois and more particularly described on Exhibit A attached hereto and incorporated herein;

WHEREAS, pursuant to that certain lease dated July 27, 2009, (as amended, the "Lease"), the Landlord has leased to Tenant, and Tenant has leased from Landlord, a portion of said Property, which portion of the Property, as more particularly described in the Lease, is hereinafter referred to as the "Premises"; and

WHEREAS, the Lender and the Tenant desire to confirm their understanding with respect to the Lease, the Mortgage, and the Premises.

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

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1. The Lease is and shall be subject and subordinate to the lien of the Mortgage insofar as it affects the Premises, to the full extent of the principal sum secured thereby and interest thereon, and any other sums secured thereby, except as otherwise noted herein.

2. In the event that the interest of the Landlord under the Lease shall be transferred the Lender by reason of judicial foreclosure, power-of-sale foreclosure, deed-in-lieu of foreclosure, or by any other means, and the Tenant receives written notice from Landlord thereof, then:

a. Tenant agrees that it shall attorn to the Lender and be bound to the Lender under all of the terms, covenants, and conditions of the Lease for the balance of the remaining term thereof and any extension thereof that are duly exercised by the Tenant, with the same force and effect as if the Lender were the landlord or lessor under the Lease; and

b. Lender agrees that the possession by Tenant of the Premises shall not be disturbed so long as tenant is not in default under the Lease beyond any applicable grace or cure periods, and that Lender shall be bound by all of the obligations imposed on Landlord by, in, and under the Lease, which arise from and after the transfer of the interest of Landlord to Lender.

3. All notices and other communications provided for in this Agreement ("Notices") shall be in writing. The "Notice Addresses" of the parties for purposes of this Agreement are as follows:

Lender: Charles R. Thomas  
Senior Vice President  
Inland Bank and Trust  
2805 Butterfield Road  
Suite 200  
Oak Brook, Illinois 60523

with copy to: James A. Schraidt, Esq.  
Scott & Kraus, LLC  
150 South Wacker Drive  
Suite 2900  
Chicago, Illinois 60606

Tenant: Odyssey HealthCare Operating A, LP  
717 N. Harwood, Suite 1500  
Dallas, Texas 75201  
Attention: Facilities Manager  
Phone: (214) 245-3523  
Facsimile: (214) 245-3337

or such other address as a party may designate by Notice duly given in accordance with this paragraph to the other parties. A Notice to a party shall be effective when delivered to such party's Notice Address by any means, including, without limitation, personal delivery by the party giving the Notice, delivery by United States regular, certified, or registered mail, or

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delivery by a commercial courier or delivery service. If the Notice Address of a party includes a facsimile number or electronic mail address, Notice given by facsimile or electronic mail shall be effective when delivered at such facsimile number or email address. If delivery of a Notice is refused, it shall be deemed to have been delivered at the time of such refusal of delivery. The party giving a Notice shall have the burden of establishing the fact and date of delivery or refusal of delivery of a Notice.

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

5. This Agreement may be executed in counterparts, which together shall constitute a single instrument.

6. This Agreement shall also bind and benefit the heirs, legal representatives, successors, and assigns of the respective parties hereto, and all covenants, conditions, and agreements herein contained shall be construed as running with the land. This Agreement is not intended to and shall not amend or modify the Lease.

[The remainder of this page intentionally left blank; signature pages(s) follow].



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[Tenant signature/notary page to Subordination, Non-Disturbance and Attornment Agreement].

**TENANT:**

Odyssey HealthCare Operating A, LP  
a Delaware limited partnership  
d/b/a Odyssey HealthCare of Chicago

By: Odyssey HealthCare GP, LLC  
a Delaware limited liability company  
its general partner

By: *R. Dirk Allison*  
R. Dirk Allison

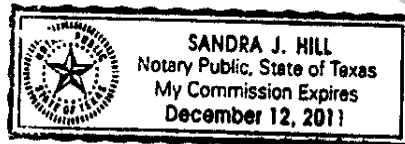
Title: Senior Vice President and CFO

STATE OF TEXAS            )  
  ) SS  
COUNTY OF DALLAS        )

I hereby certify on this day before me, an officer duly qualified to take acknowledgments, personally appeared R. Dirk Allison, who personally acknowledged himself to be the Senior Vice President and CFO of Odyssey HealthCare GP, LLC, the general partner of Odyssey HealthCare Operating A, LP, and who acknowledged before me that he executed this instrument on behalf of the Tenant freely, voluntarily, and for the purposes herein expressed.

WITNESS my hand and official seal.

Signature *Sandra J. Hill* (Seal)



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## EXHIBIT "A"

### PROPERTY DESCRIPTION

The Property located at 85 Algonquin Road, Arlington Heights, Illinois, and being more particularly described as follows:

Parcel 1: Lot 2 in Arlington Place Subdivision, being a subdivision in Section 16, Township 41 North, Range 1, East of the Third Principal Meridian, in Cook County, Illinois, except that part taken in fee simple title by the Department of Transportation of the State of Illinois in Case Number 93LS1190, as follows: that part of Lot 2 in Arlington Place Subdivision, being a subdivision in part of Section 16, Township 41 North, Range 1, East of the Third Principal Meridian, in Cook County, Illinois, according to the plat thereof recorded November 29, 1979 as document 25261219, described as follows: beginning at the Northeast corner of said Lot 2; Thence on an assumed bearing of South 32° 36' 04" West along the Easterly line of said Lot 2, a distance of 14.43 feet to a point on a 2551.07 foot radius curve, the center of circle of said curve bears North 33° 27' 05" East from said point; Thence Northwesterly along said curve, radius 2551.07 feet, central angle 1° 33' 00" 69.01 feet to the Westerly line of said Lot 2, being also a point on a 30.00 foot radius curve, the center of circle of said curve bears South 88° 23' 13" West from said point; Thence Northwesterly along said curve, being also the said Westerly line of Lot 2, radius of 30.00 feet, central angle 55° 09' 09" 28.83 feet to the Northwest corner of said Lot 2, being also a point on a 2541.29 foot radius curve, the center of circle of said curve bears North 34° 19' 04" East from said point; Thence Southeasterly along said curve, being also the Northerly line of said Lot 2, radius 2541.29 feet, central angle 2° 06' 11" 93.28 feet (93.29 feet, recorded) to the point of beginning.