

INSTRUMENT PREPARED BY:
Lance Johnson, Esq.
Martin & Karcazes, Ltd.
161 N. Clark Street - Suite 550
Chicago, Illinois 60601



Doc#: 1035647015 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/22/2010 09:39 AM Pg: 1 of 12

MAIL TO:

Community Bank of DuPage
535 Ogden Ave.
Downers Grove, Illinois 60515

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 28th day of OCTOBER, 2010, by and between BIO-MEDICAL APPLICATIONS OF ILLINOIS, INC., a Delaware corporation d/b/a WEST BELMONT DIALYSIS CENTER ("**Tenant**"), 4935 WEST BELMONT, INC., an Illinois corporation ("**Landlord**"), and COMMUNITY BANK OF DUPAGE, an Illinois banking corporation ("**Mortgagee**").

RECITALS:

A. Mortgagee is the holder of a certain Mortgage ("**Mortgage**"), as from time to time modified, encumbering the Real Estate (hereinafter defined) and securing a principal indebtedness in an amount equal to **\$1,635,000.00**.

B. Tenant has entered into a lease agreement (such lease agreement hereinafter being referred to as "**Lease Agreement**," and the Lease Agreement, together with all amendments and modifications thereof, hereinafter being referred to as "**Lease**") dated December 1, 2008, with Landlord (or Landlord's predecessor-in-interest), pursuant to which Tenant leased certain premises ("**Leased Premises**"), consisting of a certain portion of the building ("**Building**") on the parcel of land ("**Land**") commonly known as 4935-45 W. Belmont Ave., Chicago, IL, and legally described in Exhibit A attached hereto (the Land and Building herein being collectively referred to as "**Real Estate**").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Landlord and Tenant represent and warrant to Mortgagee that the Lease constitutes the entire agreement between Tenant and Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of Tenant with respect to the Leased Premises.

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2. Landlord and Tenant hereby certify to Lender that as of this date and to the best of Landlord and Tenant's current actual knowledge, no part to the Lease is in default thereunder; that no rent under the Lease has been paid more than thirty (30) days in advance of its due date; and that Tenant, as of this date and to the best of its current actual knowledge, has no charge, lien or claim of offset under the Lease, or otherwise, against the rents or other charges due or to become due thereunder.

3. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereinafter referred to as a "**Landlord's Default**"), Tenant shall: (a) provide Mortgagee with a notice of Landlord's Default specifying the nature thereof and the section of the Lease under which same arose, and (b) allow Mortgagee not less than thirty (30) days following receipt of such notice of Landlord's Default to cure the same; provided, however, that if such Landlord's Default is not readily curable within such thirty (30) day period Tenant shall give Mortgagee such additional time as Mortgagee may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as Mortgagee is diligently pursuing a cure. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Mortgagee fails to cure same within the time period specified above. For purposes of this Paragraph 3, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without Landlord having effectuated a cure thereof.

4. Subject to the terms of this Agreement, Tenant covenants with Mortgagee that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now and hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to Mortgagee's right, title and interest in and to such proceeds and awards.

5. Tenant acknowledges that Landlord has collaterally assigned to Mortgagee all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, Tenant

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agrees that, upon receipt of a notice of a default by Landlord under such assignment and a demand by Mortgagee for direct payment to Mortgagee of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Mortgagee. Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to Landlord and Mortgagee, provided Tenant has received written notice from Mortgagee or Landlord that the Loan is then outstanding.

6. Mortgagee agrees that so long as Tenant is not in default under the Lease, subject to notice and cure periods provided to Tenant thereunder:

a. Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless Tenant is a necessary party under applicable law); and

b. The possession by Tenant of the Leased Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure; or (ii) any default under the Mortgage.

7. If Mortgagee or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Real Estate as "**landlord**" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (b) below), and in such event:

a. Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term), and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "**landlord**" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Mortgagee exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

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b. Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be: (i) liable for any act or omission of any prior landlord (including Landlord) that is not then continuing under the Lease; (ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Mortgagee with (A) notice of the Landlord's Default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Section 4 above; (iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord); (iv) liable to refund or otherwise account to Tenant for any security deposit not actually paid over to such new owner by Landlord; (v) bound by any amendment or modification of the Lease governing amounts due from Tenant to Landlord thereunder, made without Mortgagee's consent; (vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord); or (vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

8. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee:	Community Bank of DuPage 535 Ogden Ave. Downers Grove, IL 60515 Attn: Loan Department
To Tenant:	Bio-Medical Applications of Illinois, Inc. at the Leased Premises
With a copy to:	Bio-Medical Applications of Illinois, Inc. c/o Fresenius Medical Care North America 920 Winter St. Waltham, MA 02451 Attn: Law Department
To: Landlord:	4935 West Belmont, Inc. 4935 W. Belmont Ave. Chicago, IL 60641 Attn: Lea Stames

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or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

9. Tenant acknowledges and agrees that Mortgagee will be relying on the representations, warranties, covenants and agreements of Tenant contained herein.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Mortgagee, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

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[SIGNATURE PAGE FOLLOWS]

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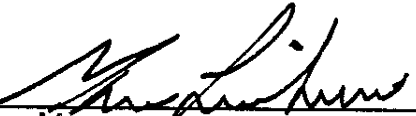
Lender

Community Bank of Dupage

By: _____
Name: _____
Title: _____

Tenant

**Bio-Medical Applications of
Illinois, Inc., DBA West Belmont
Dialysis Center**

By: 
Name: Marc Lieberman
Title: Asst. Treasurer

Borrower

4935 West Belmont, Inc.

By: _____
Name: _____
Title: _____

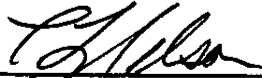
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***** Acknowledgments on the Following Page*****

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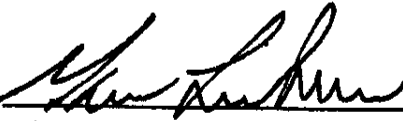
Lender

Community Bank of Dupage

By: 
Name: TOM NELSON
Title: PRESIDENT

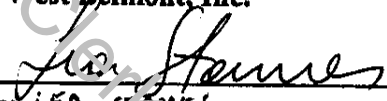
Tenant

**Bio-Medical Applications of
Illinois, Inc., DBA West Belmont
Dialysis Center**

By: 
Name: Marc Lieberman
Title: Asst. Treasurer

Borrower

4935 West Belmont, Inc.

By: 
Name: LEA JAMES
Title: PRESIDENT

***** Acknowledgments on the Following Page*****

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the dates written below.

LENDER:

COMMUNITY BANK OF DUPAGE

Date: 10-28-10

By: *T Nelson*
Print: Thomas L. Nelson
Its: Pres.

TENANT:

BIO-MEDICAL APPLICATIONS OF ILLINOIS, INC.

Date: _____

By: _____
Print: _____
Its: _____

LANDLORD:

4935 WEST BELMONT, INC.

Date: 10-28-10

By: *Lea Stames*
Lea Stames, President

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ACKNOWLEDGEMENT OF TENANT

Commonwealth of Massachusetts)
) ss.
 County of Middlesex)

On this the 4 day of Nov, 2010, before me C. Wynelle Scenna, the undersigned Notary Public, personally appeared Meredith Lieberman as Assistant Treasurer of Bio-Medical Applications of Illinois, Inc. DBA West Belmont Dialysis Center, a Delaware corporation, proved to me through satisfactory evidence, which was/were personally known to be the person(s) whose name(s) is/are signed on the preceding or attached document and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.



C Wynelle Scenna
 Signature of Notary

C Wynelle Scenna
 Printed Name of Notary

My commission expires: 08-01-2014

Place Notary Seal and/or Any Stamp Above

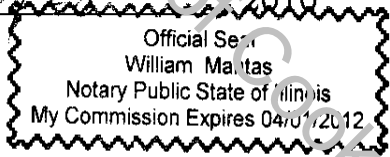
CLERK OF COOK COUNTY CLERK'S OFFICE


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LENDER'S ACKNOWLEDGEMENT

State of Illinois)
) ss.
County of COOK)

The undersigned, a Notary Public in and for said county, in the aforesaid State, do hereby certify that TOM NELSON, known to me to be the same person/s whose name/a is/are subscribed to the foregoing instrument as PRESIDENT of COMMUNITY BANK OF DUPAGE, appeared before me this day in person and acknowledged that he/she/they signed and delivered the said instrument as his/her/their own free and voluntary act, and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

Dated: 10/23, 2010



Notary Public

TENANT'S ACKNOWLEDGEMENT

State of _____)
) ss.
County of _____)

The undersigned, a Notary Public in and for said county, in the aforesaid State, do hereby certify that _____, known to me to be the same person whose name is subscribed to the foregoing Subordination, Non-Disturbance and Attorney Agreement as the _____ of BIO-MEDICAL APPLICATIONS OF ILLINOIS, INC., appeared before me this day in person and acknowledged that he/she/they signed and delivered the said instrument as his/her/their own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Dated: _____, 2010

Notary Public

(See prior page)

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE LEASED PREMISES

PARCEL 1: LOT 11 (EXCEPT THE EAST 25 FEET THEREOF) AND LOTS 12, 13, 14, 15, AND 16 IN BLOCK 8 IN FALCONER'S ADDITION TO CHICAGO, A SUBDIVISION OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: THE EAST 4 FEET OF LOT 17 IN BLOCK 8 IN FALCONER'S ADDITION TO CHICAGO, A SUBDIVISION OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3: EASEMENT FOR THE BENEFIT OF ABOVE FOR ACCESS FOR PASSENGER CARS ONLY AS CREATED IN EASEMENT DATED SEPTEMBER 29, 1969 AND RECORDED OCTOBER 24, 1969 AS DOCUMENT NUMBER 20995236 OVER THE WEST 10 FEET OF THE EAST 14 FEET OF LOT 17 IN BLOCK 8 IN FALCONER'S ADDITION TO CHICAGO, A SUBDIVISION OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINS:

	13-28-202-007-0000
	13-28-202-008-0000
	13-28-202-009-0000
	13-28-202-010-0000
	13-28-202-011-0000
	13-28-202-040-0000

COMMON ADDRESS: 4935-45 W. BELMONT AVE., CHICAGO, IL 60641