



Doc#: 1227810078 Fee: \$56.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/04/2012 12:17 PM Pg: 1 of 10

This Document Prepared by and
After Recording Return to:

Marilyn Dunn
55 W. Wacker
9th Floor
Chicago, Illinois 60601

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889400602445

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "**Assignment**") is made and delivered as of September 28, ²⁰¹² by ENCORE REALTY PARTNERS, LLC, an Illinois limited liability company (the "**Assignor**"), to and for the benefit of HILLSIDE BF HOLDINGS, LLC, an Illinois limited liability company (the "**Assignee**").

RECITALS:

A. Pursuant to the terms and conditions of that certain Loan Agreement of even date herewith (the "**Loan Agreement**"), entered into between Assignor and Assignee, the Assignee has agreed to make a loan to the Assignor in the principal amount of Two Million Two Hundred Fifty Thousand and No/100 Dollars (\$2,250,000) (the "**Loan**"). The Loan shall be evidenced by a Promissory Note executed and delivered by Assignor to Assignee of even date herewith (the "**Note**") and shall become due on September 28, 2014 (the "**Maturity Date**"), except as may be accelerated pursuant to the terms hereof or of the Loan Agreement, and will bear interest at a rate and all on and subject to the terms and conditions set forth in the Loan Agreement.

B. A condition precedent to the making of the Loan by the Assignee to the Assignor is the execution and delivery by the Assignor of this Assignment.

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

1. **Definitions.** All capitalized terms which are not defined herein shall have the meanings ascribed thereto in the Loan Agreement.

2. **Grant of Security Interest.** The Assignor hereby grants, transfers, sets over and assigns to the Assignee, all of the right, title and interest of the Assignor in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, accounts and other receivables arising

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out of or from the land legally described in Exhibit A attached hereto and made a part hereof and all buildings and other improvements located thereon (said land and improvements being hereinafter referred to collectively as the "Premises"), including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any lease; (ii) all leases and subleases (collectively, "Leases"), now or hereafter existing, of all or any part of the Premises together with all guaranties of any of such Leases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is an absolute transfer and assignment of the foregoing interests to the Assignee given to secure:

(a) Payment by the Assignor when due of (i) the indebtedness evidenced by the Note and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to the Assignee by the Assignor under or with respect to the Loan Documents; and (iii) all costs and expenses paid or incurred by the Assignee in enforcing its rights hereunder to the extent herein provided, including without limitation, court costs and reasonable attorneys' fees; and

(b) Observance and performance by the Assignor of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Assignor or any other obligor to or benefiting the Assignee which are evidenced or secured by or otherwise provided in the Loan Agreement, this Assignment or any of the other Loan Documents, together with all amendments and modifications thereof.

This Assignment is intended by the parties as, and is acknowledged by the Assignor to be, a present assignment, mortgage and pledge of rents and profits.

3. **Representations and Warranties of Assignor.** The Assignor represents and warrants to the Assignee that:

(a) This Assignment, as executed by the Assignor, constitutes the legal and binding obligation of the Assignor enforceable in accordance with its terms and provisions, except to the extent that enforceability may be affected or limited by applicable bankruptcy, insolvency and other similar debtor relief laws affecting the enforcement of creditors' rights generally and general principals of equity;

(b) The Assignor is the lessor under all Leases;

(c) There is no other existing assignment of the Assignor's entire or any part of its interest in or to any of the Leases, or any of the rents, issues, income or profits assigned hereunder, nor has the Assignor entered into any agreement to subordinate any of the Leases or the Assignor's right to receive any of the rents, issues, income or profits assigned hereunder;

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(d) The Assignor has not executed any instrument or performed any act which may prevent the Assignee from operating under any of the terms and provisions hereof or which would limit the Assignee in such operation; and

(e) To Assignor's knowledge, there are no defaults by the landlord and, to the Assignor's knowledge, there are no material defaults by tenants under any Leases, except as otherwise disclosed to Assignee prior to the date hereof.

4. **Covenants of the Assignor.** The Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) The Assignor shall not, without the prior written consent of Assignee, enter into any Lease for all or any portion of the Premises other than Operating Lease and the Montessori Lease. The Assignor shall not agree to any modification or amendment of any Lease unless approved in writing by Assignee.

(b) The Assignor shall not collect any rents more than one month in advance of the time when the same shall become due, except for security or similar deposits.

(c) The Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and the Assignor shall not do or suffer to be done anything to impair the security thereof. Without Assignee's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, the Assignor shall not (i) release the liability of any tenant under any Lease, other than in the usual and ordinary course of business, (ii) consent to any tenant's withholding of rent or making monetary advances and off setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any Lease, except as specifically provided therein, other than in the usual and ordinary course of business, or (v) enter into any oral leases with respect to all or any portion of the Premises.

(d) Without Assignee's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, the Assignor shall not give any approval or consent required or permitted by any Lease, including, but not limited to, any consent to any assignment of, or subletting under, any Lease, except as expressly permitted thereby, except in the usual and ordinary course of business.

(e) The Assignor shall not cancel or terminate any Lease without the Assignee's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

(f) The Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of the Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which the Assignee may appear as necessary or appropriate.

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(h) The Assignor shall give prompt notice to the Assignee of any notice of any default by the lessor under any Lease received from any tenant or guarantor thereunder.

(i) Without the Assignee's prior written consent, which consent shall not be unreasonably withheld, the Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder, unless with respect to any particular Lease, the Assignor in the usual and ordinary course of business determines not to do so.

(j) The Assignor shall not permit any of the Leases to become subordinate to any lien other than liens securing the Loan or the Senior Loan, or liens for general real estate taxes in delinquent.

(k) The Assignor shall from time to time permit the Assignee to inspect the Leases at reasonable times upon reasonable advance notice, and shall promptly after the Assignee's request furnish the Assignee with copies of the Leases.

(l) If any tenant under any Lease is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, the Assignor covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of the Assignee, which consent shall not be unreasonably withheld.

5. **Rights Prior to Default.** Unless or until an "**Event of Default**" (as defined in Section 6 hereof) shall occur and be continuing, the Assignor shall have the right to collect, at the time (but in no event more than one month in advance, except for security or similar deposits) provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Upon the occurrence of an Event of Default, the Assignor's right to collect such rents, issues, income and profits shall immediately terminate without further notice thereof to the Assignor. The Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

6. **Events of Default.** Each of the following shall constitute an "**Event of Default**" under this Assignment:

(a) The Assignor fails to pay any amount payable under this Assignment within five (5) days after written notice from Assignee.

(b) The Assignor fails to perform or observe, or to cause to be performed or observed, any other obligation, covenant, term, agreement or provision required to be performed or observed by the Assignor under this Assignment and the failure of Assignor to cure the same within thirty (30) days after notice from Assignee to Assignor thereof; provided that, if such failure cannot reasonably be cured within such 30- day period, Assignor shall have such additional period of time to cure such failure as is reasonably necessary provided further that Assignor is diligently pursuing such cure.

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(c) The occurrence of an Event of Default under any of the other Loan Documents.

7. **Rights and Remedies Upon Default.** At any time upon or following the occurrence and during the continuance of any Event of Default, the Assignee, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on the Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing the Assignor or any guarantor of the Note from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents:

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as the Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Assignee, to make, enforce, modify and accept the surrenders of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which the Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder. This Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to the Assignee, without proof of default hereunder, upon receipt from the Assignee of written notice to thereafter pay all such rents and other amounts to the Assignee and to comply with any notice or demand by the Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and the Assignor shall facilitate in all reasonable ways the Assignee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to the Assignee;

(d) Make any payment or do any act required herein of the Assignor in such manner and to such extent as the Assignee may reasonably deem necessary, and any amount so paid by the Assignee shall become immediately due and payable by the Assignor with interest thereon until paid at the Default Rate and shall be secured by this Assignment;

8. **Application of Proceeds.** Except as otherwise provided in the Loan Agreement or by applicable law, all sums collected and received by the Assignee out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Events of

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Default shall be applied in such order as the Assignee shall elect in its sole and absolute discretion.

9. **Limitation of the Assignee's Liability.** The Assignee shall not be liable for any loss sustained by the Assignor resulting from the Assignee's failure to let the Premises or from any other act or omission of the Assignee in managing, operating or maintaining the Premises following the occurrence of an Event of Default except to the extent arising from any act, omission or willful malfeasance or gross negligence of any of the Assignee, its directors, officers, agents and authorized employees. The Assignee shall not be obligated to observe, perform or discharge, nor does the Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of the Assignor under or by reason of this Assignment. The Assignor shall and does hereby agree to indemnify, defend (using counsel satisfactory to the Assignee) and hold the Assignee harmless from and against any and all liability, loss or damage which the Assignee may incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligation or undertaking on the Assignee's part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall the Assignor be liable for any liability, loss or damage which the Assignee incurs as a result of any act, omission or willful malfeasance or gross negligence of any of the Assignee, its directors, officers, agents and authorized employees or relating to or arising from actions taken or omissions with respect to the Premises after the surrender of possession thereof to the Assignee in accordance with the terms of the Mortgage. Should the Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by the Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon the Assignee for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make the Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the other Loan Documents, and no exercise by the Assignee of any of the rights set forth herein or in the other Loan Documents shall constitute or be construed as constituting the Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by the Assignee pursuant to the provisions hereof or of the other Loan Documents.

10. **No Waiver.** Nothing contained in this Assignment and no act done or omitted to be done by the Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by the Assignee of its rights and remedies under any of the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of the Assignee under the terms and provisions of such instruments, and the Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by the Assignee

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hereunder. The Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of the Assignee's rights and powers hereunder.

11. **Further Assurances.** The Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as the Assignee may designate) and shall do or cause to be done such further acts, as the Assignee may reasonably request, in order to permit the Assignee to perfect, protect, preserve and maintain the assignment made to the Assignee by this Assignment.

12. **Security Deposits.** The Assignor acknowledges that the Assignee has not received for its own account any security deposited by any tenant pursuant to the terms of the Leases and that the Assignee assumes no responsibility or liability for any security so deposited.

13. **Compliance with Law of State.**

(a) If any provision in this Assignment shall be inconsistent with any provision of the applicable laws of the State in which the Premises are located, such laws shall take precedence over the provisions of this Assignment, but shall not invalidate or render unenforceable any other provision of this Assignment that can be construed in a manner consistent with such laws.

(b) If any provision of this Assignment shall grant to the Assignee any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in the Assignee under applicable laws of the State in which the Premises are located in the absence of said provision, the Assignee shall be vested with the powers, rights and remedies granted by such laws to the full extent permitted by law.

14. **Severability.** If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the Assignee and the Assignor shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

15. **Successors and Assigns.** This Assignment is binding upon the Assignor and its legal representatives, successors and assigns, and the rights, powers and remedies of the Assignee under this Assignment shall inure to the benefit of the Assignee and its successors and assigns.

16. **Prior Agreements; No Reliance; Modifications.** This Assignment shall represent the entire, integrated agreement between the parties hereto relating to the subject matter of this Assignment, and shall supersede all prior negotiations, representations or agreements pertaining thereto, either oral or written. The Assignor acknowledges it is executing this Assignment without relying on any statements, representations or warranties, either oral or written, that are not expressly set forth herein. This Assignment and any provision hereof shall

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not be modified, amended, waived or discharged in any manner other than by a written amendment executed by all parties to this Assignment.

17. **Duration.** This Assignment shall become null and void at such time as the Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents.

18. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

19. **Notices.** All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or mailed in the manner and to the addresses of the Assignor and the Assignee, as the case may be, as specified in the Loan Agreement.

20. **Execution of Counterparts.** This Assignment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

21. **Litigations Provisions.**

(a) **Consent to Jurisdiction.** THE ASSIGNOR AND ASSIGNEE CONSENT AND SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN CHICAGO, ILLINOIS, AND OF ANY STATE OR FEDERAL COURT LOCATED OR HAVING JURISDICTION IN THE COUNTY IN WHICH THE PROJECT IS LOCATED, IN WHICH ANY LEGAL PROCEEDING MAY BE COMMENCED OR PENDING RELATING IN ANY MANNER TO THIS ASSIGNMENT, THE LOAN OR ANY OF THE OTHER LOAN DOCUMENTS ANY OBJECTION TO VENUE IN ANY SUCH COURT AND WAIVES ANY RIGHT EITHER MAY HAVE TO TRANSFER OR CHANGE THE VENUE FROM ANY SUCH COURT.

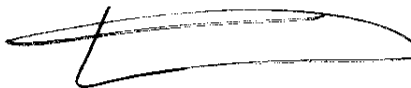
(b) **Waiver of Jury Trial.** THE ASSIGNOR AND ASSIGNEE HEREBY WAIVE TRIAL BY JURY IN ANY LEGAL PROCEEDING RELATING TO THIS ASSIGNMENT, THE LOAN OR ANY OF THE OTHER LOAN DOCUMENTS.

[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]

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IN WITNESS WHEREOF, the Assignor has executed and delivered this Assignment as of the day and year first above written.

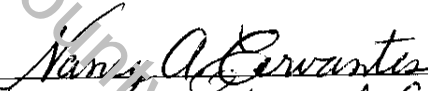
ENCORE REALTY PARTNERS, LLC

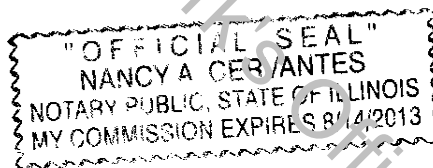


By _____
Robert Hartman, Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

Before me, ENCORE REALTY PARTNERS, LLC, an Illinois limited liability company, this 28 day of September, 2012, personally appeared by Robert Hartman, Manager, and acknowledged the execution of the foregoing instrument.


Printed Name: Nancy A. Cervantes
Notary Public
Commission Expires: 08-14-2013



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EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

THAT PART OF THE SOUTH ½ OF THE NORTHWEST ¼ OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST ¼; THENCE NORTH 00 DEGREES 04 MINUTES 43 SECONDS EAST, 1324.21 FEET; THENCE NORTH 89 DEGREES 35 MINUTES 43 SECONDS EAST, 954.00 FEET TO A SET ½" IRON ROD ON THE NORTHEASTERLY RIGHT OF WAY LINE OF THE DWIGHT D. EISENHOWER EXPRESSWAY (A 300 FOOT RIGHT OF WAY), SAID IRON ROD BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 89 DEGREES 35 MINUTES 43 SECONDS EAST, 691.10 FEET; THENCE SOUTH 00 DEGREES 24 MINUTES 17 SECONDS EAST AT RIGHT ANGLES TO THE PRECEDING COURSE, A DISTANCE OF 165.00 FEET; THENCE SOUTH 89 DEGREES 35 MINUTES 43 SECONDS WEST AT RIGHT ANGLES TO THE PRECEDING COURSE, A DISTANCE OF 65.00 FEET; THENCE SOUTH 00 DEGREES 24 MINUTES 17 SECONDS EAST AT RIGHT ANGLES TO THE PRECEDING COURSE, A DISTANCE OF 153.17 FEET TO A POINT ON THE NORTHEASTERLY LINE OF THE DWIGHT D. EISENHOWER EXPRESSWAY, SAID POINT ALSO BEING ON A CURVE CONCAVE SOUTHWESTERLY; THENCE ALONG THE NORTHEASTERLY LINE OF SAID EXPRESSWAY, BEING A CURVE TO THE LEFT HAVING A RADIUS OF 4029.83 FEET AND SUBTENDING A CHORD OF LENGTH 702.31 FEET AND BEARING NORTH 63 DEGREES 27 MINUTES 57 SECONDS WEST, FOR AN ARC DISTANCE OF 703.20 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

STREET ADDRESS: 4600 Frontage Road, Hillside, Illinois

PIN: 15-17-101-014-0000