

# UNOFFICIAL COPY



Prepared by and after  
recording return to:

Doc#: 1227810079 Fee: \$58.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/04/2012 12:18 PM Pg: 1 of 11

Marilyn Dunn  
55 W. Wacker  
9<sup>th</sup> Floor  
Chicago, Illinois 60601

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (this "**Agreement**") is dated as of September 28, 2012, by and among HILLSIDE BF HOLDINGS LLC, an Illinois limited liability company ("**Lender**"), ARIA POST ACUTE CARE, LLC, an Illinois limited liability company ("**Tenant**"), and ENCORE REALTY PARTNERS, LLC, an Illinois limited liability company ("**Landlord**").

### RECITALS

A. Tenant is the tenant under a certain Lease Agreement, dated September 28, 2012, with Landlord (the "**Lease**") for the property described in Exhibit A attached hereto and made a part hereof (the "**Property**"), and the buildings and improvements now existing or hereafter constructed on the Property and the equipment and fixtures attached to such buildings and improvements.

B. This Agreement is being entered into in connection with a mortgage loan (the "**Loan**") from Lender to Landlord, evidenced by a note from Landlord (the "**Note**") and secured by, *inter alia*: (a) that certain Second Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing encumbering the Property, dated as of September 28, 2012, (the "**Mortgage**"); and (b) that certain Assignment of Rents and Leases dated as of September 28, 2012 (the "**Assignment of Rents**"). The Mortgage and the Assignment of Rents are hereinafter collectively referred to as the "**Security Documents**".

### AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Subordination. Tenant agrees that the Lease is and shall be subject and subordinate to the Security Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Security Documents, to the full extent of all amounts secured by the Security Documents from time to time. Said subordination is to have the

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same force and effect as if the Security Documents and such renewals, modifications, consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any memorandum or short form thereof (and without Lender having any knowledge of the Lease). In addition, to the extent that the Lease shall entitle Tenant to notice of any mortgage, this Agreement shall constitute such notice to Tenant with respect to the Mortgage.

2. Non-Disturbance. Notwithstanding the provisions of Section 1, Lender agrees that, if Lender exercises any of its rights under the Security Documents, including an entry by Lender pursuant to the Mortgage or a foreclosure of, or exercise of any power of sale under, the Mortgage or any sale or transfer in lieu thereof, Lender will not disturb Tenant's right of quiet possession of the Property under the terms of the Lease so long as no "Event of Default" (as defined in the Lease) shall have occurred and be continuing and Tenant shall not be in default of any of its obligations under this Agreement beyond any applicable notice and/or cure periods provided for herein.

3. Attornment, Etc. Tenant agrees that, in the event of a foreclosure of the Mortgage or the acceptance of a conveyance in lieu of foreclosure by Lender or any other succession of Lender to ownership of Landlord's interest in the Property, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and, provided only that Tenant shall have received written notice from Lender or Lender's designee that Lender has succeeded to the interest of Landlord under the Lease or otherwise has the right to receive rents and require Tenant to perform its obligations under the Lease, Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease. Such attornment shall be effective and self-operative, without the execution of any further instrument on the part of any of the parties hereto, immediately upon Lender succeeding to Landlord's interest in the Premises. Upon the written request of either Lender or Tenant to the other given on or after any such foreclosure, acceptance of a conveyance in lieu of foreclosure or other succession of Lender or to ownership of Landlord's interest in the Premises, Lender, as landlord, and Tenant, as tenant, shall execute a lease of the Property containing, subject to the terms hereof, all of the same terms, provisions, options and conditions as are contained in the Lease between Landlord and Tenant, which lease shall be for the then unexpired portion of the term of the Lease.

4. Lender Not Bound, Etc. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

(a) Liable for any act or omission of any prior Landlord (including, without limitation, the then-defaulting Landlord), or

(b) Subject to any defense or offsets which Tenant may have against any prior Landlord (including, without limitation, the then-defaulting Landlord) or

(c) Bound by any payment of "Base Rent" or "Additional Rent" (as such terms are defined in the Lease) which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the

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then-defaulting Landlord) except to the extent such monies actually have been received by Lender, or

(d) Bound by any obligation of any prior Landlord to make any payment to Tenant which was required to be made, or arose from any circumstance which occurred, prior to the time Lender succeeded to any such prior Landlord's interest, or

(e) Accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender, or

(f) Bound by any amendment or modification of the Lease for which Lender has not given its written consent or by any waiver or forbearance on the part of any prior Landlord (including, without limitation, the then-defaulting Landlord) made or given without the written consent of Lender.

In the event that Lender shall acquire title to the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Property, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Property for the payment and discharge of any obligations or liability imposed upon Lender hereunder, under the Lease or under any new lease of the Property.

5. Lender's Cure Rights. Tenant hereby agrees to give to Lender copies of all notices of Landlord default(s) under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to Lender. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's obligations with respect to the subject matter of such Landlord default or of any other obligations of Landlord under the Lease. If, in curing any such default, Lender requires access to the Property to effect such cure, Tenant shall furnish access to the Property to Lender as required by Lender to effect such cure upon reasonable notice at all reasonable times. Unless Lender otherwise agrees in writing, Lender shall have no liability to perform Landlord's obligations under the Lease, both before and after Lender's exercise of any right or remedy under this Agreement. No Landlord default under the Lease shall exist or shall be deemed to exist (i) as long as Lender, in good faith, shall have commenced to cure such default within thirty (30) days after Lender's receipt of notice of such default, and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (ii) if possession of the Property is required in order to cure such default, or if such default is not susceptible of being cured by Lender, as long as Lender, in good faith, shall have notified Tenant that Lender intends to institute proceedings under the Security Documents, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of the Lease by reason of any default thereunder by Landlord (provided nothing herein shall be construed as creating, giving rise to, acknowledging or recognizing any such termination right on Tenant's part) or as a result of a rejection of the Lease following Landlord's bankruptcy, upon Lender's written request, which must be given (if at all) within thirty (30) days after any such termination or rejection, Tenant, within fifteen (15) days after

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receipt of such request, and within thirty (30) days after Lender becomes owner of Landlord's interest in the Property, shall execute and deliver to Lender or its designee or nominee a new lease of the Property for the remainder of the term of the Lease upon all of the terms, covenants and conditions of the Lease, subject, however, to the curing of the default giving rise to such termination (unless such default is not susceptible to a cure by Lender, its designee or nominee). Neither Lender nor its designee or nominee shall become liable under the Lease unless and until Lender or its designee or nominee becomes, and then only with respect to any occurrence or omission during any period during which Lender or its designee or nominee becomes, the owner of Landlord's interest in the Property. Lender shall have the right, without Tenant's consent but subject to the provisions of this Agreement, to foreclose, or exercise any power of sale under, the Mortgage or to accept a conveyance in lieu of foreclosure of the Mortgage or to exercise any other remedies under the Security Documents.

6. Lender's Consent Required. Tenant agrees that it will remain obligated under the Lease in accordance with its terms and, without the prior written consent of Lender as determined in Lender's reasonable discretion, neither Landlord nor Tenant may (a) amend or modify any provision of the Lease, (b) waive any material provision of the Lease, or (c) except as expressly set forth in the Lease with respect to Tenant's rights or automatic termination upon certain casualty or condemnation events, terminate, cancel or surrender the Lease, or enter into any agreement to do so. Tenant also agrees that it will not pay any installment of Base Rent or Additional Rent under the Lease more than one month in advance of the due date thereof or otherwise than in the manner provided for in the Lease.

7. Acknowledgment of Assignment Etc. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignment, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignment or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing.

8. Assignment of Lease to Lender.

(a) Tenant hereby confirms that it has notice that Landlord has assigned to Lender all of Landlord's interest in and to the Lease, and that all Base Rent or Additional Rent and any other rent or payments payable to Landlord under the Lease shall be paid when due directly by Tenant to Lender in accordance with the written direction from Lender. Tenant hereby agrees, without further notice, to pay all such rent and other sums due under the Lease to Lender in accordance with the Lender's written notice. By executing and delivering this Agreement, Tenant hereby confirms (i) that any notice required to be given by Lender to Tenant under the Lease for the purpose of granting rights to mortgagees under the Lease are fully satisfied, and (ii) that Tenant will provide Lender with a duplicate copy of any notice given by Tenant to Landlord, in accordance with the notice provisions set forth in Section 10 below.

(b) Tenant agrees and acknowledges that the interest of Landlord in the Lease has been assigned to Lender for the purposes specified in the Assignment of Rents only and that, subject to the terms hereof, the Lender assumes no obligation, duty or liability under the Lease.

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9. Estoppel. The Landlord and Tenant certify to the Lender as follows: (a) that the Lease is presently in full force and effect and has not been modified or changed; (b) that the term of the Lease has commenced, and full rental is now accruing thereunder; (c) that all conditions required to be satisfied by the Landlord and Tenant under the Lease that could have been satisfied as of the date hereof have been met; (d) that no Base Rent or Additional Rent under the Lease has been paid more than one month in advance of its due date; (e) that no default exists under the Lease on the part of the Landlord or Tenant; (f) that the Tenant, as of this date, has no charge, lien or claim of offset under the Lease or otherwise, against rents or other charges due or to become due thereunder; (g) that the Lease constitutes the entire rental agreement between the parties; and (h) that the only persons or entities in possession of the Property or having any right to the possession or use of the Property (other than the record owner) are those holding under the Lease, and residents and occupants of the Property holding under the Tenant pursuant to agreements entered into in the ordinary course of the business of operating the facility located in the Property.

10. Notices. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt or (b) the date of delivery, refusal or non-delivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to Tenant or Lender, as the case may be, at the following addresses:

If to Tenant:

Aria Post Acute Care, LLC  
7257 North Lincoln Avenue  
Lincolnwood, Illinois 60712

with a copy to:

Polsinelli Shughart  
161 N. Clark Street, Suite 4200  
Chicago, Illinois 60601  
Attention: Anne M. Cooper

If to Landlord:

Encore Realty Partners, LLC  
7257 North Lincoln Avenue  
Lincolnwood, Illinois 60712

with a copy to:

Much Shelist, P.C.  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606

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Attention: Michael D. Burstein and Abraham J. Stern

If to Lender:

Hillside BF Holdings LLC  
6039 N. Bernard St.  
Chicago, IL 60659  
Attn: Gershon Bassman

With a copy to:

Marilyn Dunn  
Attorney at Law  
55 W. Wacker  
9<sup>th</sup> Floor  
Chicago, Illinois 60601

From time to time any party may designate a new address for purposes of notice hereunder to each of the other parties hereto.

11. Miscellaneous.

(a) The term "Lender" as used herein includes any successors or assigns of the Lender named herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a conveyance in lieu of foreclosure, and their successors and assigns, and the term "Tenant" as used herein includes the Tenant named herein (the "**Original Tenant**") and any successors or assigns of the Original Tenant.

(b) If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

(c) Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

(d) This Assignment shall be governed and construed in accordance with the laws of the state in which the Property is located (the "**State**") and the laws of the United States applicable to transactions in the State.

(e) This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to

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IN WITNESS WHEREOF, Lender has executed this Subordination, Non-Disturbance and Attornment Agreement, as of the day and year first above written.

**LENDER:**

HILLSIDE BF HOLDINGS LLC, an Illinois limited partnership

By: [Signature]  
Name: GERSHON BASSMAN  
Title: MANAGER

STATE OF ILLINOIS     )  
  ) SS:  
COUNTY OF COOK     )

On this 28<sup>th</sup> day of September 2012 before me, a Notary Public in and for said County and State, personally appeared Gershon Bassman, known to me or properly identified to be the person who signed the foregoing instrument as Manager of Hillside BF Holdings LLC (the "Company"), who, being by me first duly sworn, acknowledged to me that he executed the foregoing instrument on behalf of the Company, as his and its free and voluntary act and deed for the purpose set forth therein.

[SEAL]



[Signature]  
NOTARY PUBLIC

[SIGNATURES CONTINUE ON THE FOLLOWING PAGES]

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IN WITNESS WHEREOF, Tenant has executed this Subordination, Non-Disturbance and Attornment Agreement, as of the day and year first above written.

**TENANT:**

ARIA POST ACUTE CARE, LLC, an Illinois limited liability company

BY: JMD Ventures, LLC, its Authorized Manager

By: *Gerry Jenich*  
Gerry Jenich, its Manager

STATE OF ILLINOIS     )  
  ) ss:  
COUNTY OF COOK     )

On this 28 day of Sept, 2012 before me, a Notary Public in and for said County and State, personally appeared GERRY JENICH, known to me or properly identified to be the person who signed the foregoing instrument as Manager of JMD Ventures, LLC, the authorized Manager of Aria Post Acute Care, LLC (the "Company"), who, being by me first duly sworn, acknowledged to me that he executed the foregoing instrument on behalf of the Company, as his and its free and voluntary act and deed for the purpose set forth therein.

[SEAL]



*Lesa Jagusch*  
NOTARY PUBLIC

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

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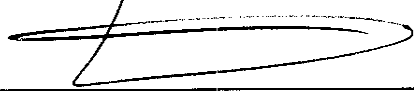


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IN WITNESS WHEREOF, Landlord has executed this Subordination, Non-Disturbance and Attornment Agreement, as of the day and year first above written.

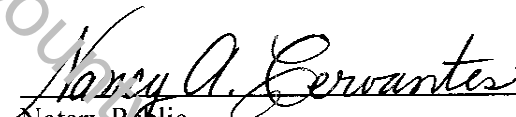
**LANDLORD:**

ENCORE REALTY PARTNERS, LLC, an Illinois limited liability company

By:   
Robert Hartman, Manager

STATE OF ILLINOIS        )  
  ) SS:  
COUNTY OF COOK        )

On this 28 day of Sept, 2012 before me, a Notary Public in and for said County and State, personally appeared Robert Hartman, known to me or properly identified to be the person who signed the foregoing instrument as a Manager of Encore Realty Partners, LLC, an Illinois limited liability company (the "Company"), who, being by me first duly sworn, acknowledged to me that he executed the foregoing instrument on behalf of the Company, as his and its free and voluntary act and deed for the purpose set forth therein.

  
Nancy A. Servantes  
Notary Public

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## Exhibit A

### LEGAL DESCRIPTION OF THE PROPERTY

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 370 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