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**THIS INSTRUMENT
PREPARED BY AND WHEN
RECORDED, RETURN TO:**

**Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attn: Christopher T. Nixon,
Esq.**

Doc#: 1321829072 Fee: \$62.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/06/2013 03:02 PM Pg: 1 of 13

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement") is effective as of August 5, 2013 (the "Effective Date"), by and among the affiliate of Guggenheim Partners Investment Management, LLC, a Delaware limited liability company, that has executed this Agreement below as lender (together with its successors and assigns, "Lender"), Back to Bed, Inc., an Illinois corporation ("Tenant"), and TCB-Clybourn Galleria, LLC a Delaware limited liability company ("Landlord").

RECITALS

A. Tenant is the tenant under a certain lease captioned "Shopping Center Lease" dated July 16, 2009 as amended by Lease Amendment dated 6/2, 2012 and as further amended (subject to the provisions hereof) by the Second Lease Amendment dated 8/5, 2013 (as amended, the "Lease") of the premises commonly known as Space B, as more particularly described in the Lease, ("Premises") in the shopping center known as "Clybourn Galleria" located at 1845 N. Clybourn Avenue, Chicago, Illinois described in Exhibit A attached hereto and made a part hereof (the "Property"), together with the buildings and improvements now existing or hereafter constructed on the Property and the equipment and fixtures attached to such buildings and improvements (collectively, the "Shopping Center").

B. This Agreement is being entered into in connection with the conveyance of the Property and the assignment of the Lease from Clybourn Galleria Investors, LLC ("Predecessor Landlord") to Landlord and a mortgage loan (the "Loan") from Lender to Landlord, evidenced by a note from Landlord (the "Note") and secured by, *inter alia*: (a) a first Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing encumbering the Premises (the "Indenture") from Landlord dated as of the Effective Date, to be recorded among the Land Records; and (b) a first Assignment of Leases and Rents (the "Assignment of Leases and Rents") dated as of the Effective Date, to be recorded among the Land Records. The

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Indenture and the Assignment of Leases and 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; Lender Election. Tenant agrees that the Lease is and shall be, at the option of Lender upon notice to Tenant, at any time and from time to time, either subject and subordinate, or superior, 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. Such options of Lender may be exercised an unlimited number of times. If subordinated, said subordination is to have the 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). This Agreement shall constitute notice to Tenant that for the time being, until further written notice to the contrary, Lender elects that the Lease is and shall be subject and subordinate to the Security Documents. 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 Indenture.

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 Indenture or a foreclosure of, or exercise of any power of sale under, the Indenture or any sale or transfer in lieu thereof, Lender will not disturb Tenant's right of quiet possession of the Premises or Tenant's other rights under the terms of the Lease and Tenant shall not be named as a party in any suit, action or proceeding in connection with the Security Documents (unless so required by applicable law for effectuating the remedies of Lender under the Security Documents and not to terminate the Lease or Tenant's rights thereunder) 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 Indenture 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 Premises, 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 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

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further instrument on the part of any of the parties hereto, immediately upon Lender succeeding to Landlord's interest in the Premises and receipt of Lender's notice as aforesaid. 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 replacement lease of the Premises 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 Landlord Acts, Omissions.* Liable for any act or omission of any prior Landlord (including, without limitation, the then-defaulting Landlord) other than ongoing acts or omissions that continue to accrue after Lender succeeds to the interest of Landlord under the Lease, of which Lender has previously been given notice in accordance with the provisions of this Agreement, or

(b) *Subject to Defenses.* 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 Advance Payments.* Bound by any payment of "Fixed Minimum Rent" or "Percentage Rent", "Common Expenses", or "Real Estate Taxes" (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 then-defaulting Landlord) except to the extent such monies actually have been received by Lender, or

(d) *Bound by Prior Payment Obligations.* Bound by any obligation of any prior Landlord to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any such prior Landlord's interest, or

(e) *Accountable for Monies Not Received.* 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 Amendments, Etc.* Bound by any amendment or modification of the Lease, made subsequent to the date hereof, 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; or

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

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 Tenant shall give any such

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notice of default to Landlord. 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 Premises to effect such cure, Tenant shall furnish reasonable access to the Premises to Lender as required by Lender to effect such cure at all reasonable times; provided that Tenant's occupancy, use and enjoyment of the Premises is not unreasonably disrupted thereby and liability insurance is provided to the same extent Landlord is required to maintain the same under the provisions of the Lease. Unless Lender otherwise agrees in writing or Lender succeeds to Landlord's interest in the Property as hereinabove provided, 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. Tenant shall not terminate the Lease in connection with any Landlord default under the Lease (i) as long as Lender, in good faith, shall have commenced to cure such default within the time period required of Landlord under the Lease calculated from the time notice of default is delivered to Lender and thereafter shall be prosecuting the same to completion with reasonable diligence and within the time period required under the Lease, 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 to conclusion. 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 periods during which Lender or its designee or nominee becomes, the owner of Landlord's interest in the Premises. 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 Indenture or to accept a conveyance in lieu of foreclosure of the Indenture or to exercise any other remedies under the Security Documents.

6. Lender's Consent Required. Without the prior written consent of Lender as determined in Lender's sole discretion, and neither Landlord nor Tenant may (a) amend, modify, or waive any provision of the Lease, or (b) except in connection with a default and subject to the provisions of Paragraph 5 above, 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 Basic Rent or Additional Rent under the Lease more than one month in advance of the due date hereof unless otherwise expressly provided for in the Lease. Except as otherwise expressly provided herein, Tenant agrees that no prepayment of Basic Rent or Additional Rent paid under the Lease more than one month in advance, no amendment or modification of the Lease, no surrender or cancellation of the Lease (except in accordance with the express provisions thereof), and no waiver or consent by Landlord under the terms of the Lease, shall be binding upon or as against Lender, as holder of the Security Documents, and as Landlord under the Lease if it succeeds to that position, unless consented to in writing by Lender. Tenant acknowledges and agrees that Lender and Landlord hereby advised Tenant that the Security Documents contain provisions requiring Landlord to obtain Lender's consent for any matter requiring Landlord's consent under the Lease. Where Lender's consent is specifically required under the Lease, unless otherwise provided therein, Lender may withhold its consent in its sole and absolute discretion.

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7. Tenant's Reliance on Notice from Lender. Tenant shall be entitled to rely on, without further investigation, any notice from any Lender and is hereby released and discharged from any and all liability with respect to any payments made or other actions taken or omitted pursuant to such notice regardless of the existence of any dispute or controversy between Lender and Landlord (or between any co-lenders). All payments and performance by Tenant for Lender or at the direction or request of Lender shall discharge the obligations of Tenant under the Lease to Landlord. In absence of notice from Lender, Tenant is to continue making such payments to Landlord (or at Landlord's direction), and performing its obligations for Landlord, in accordance with and subject to the terms of the Lease.

8. Consent to Assignment, Etc. Tenant hereby consents to the Assignment of Leases and Rents. 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.

9. Assignment of Lease to Lender.

(a) Tenant hereby confirms that it has notice that pursuant to the Assignment of Leases and Rents, Landlord has assigned to Lender all of Landlord's interest in and to the Lease, and that all Basic 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 Landlord or at Landlord's direction until Tenant receives written direction from Lender. Tenant hereby agrees, upon written 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 of default given by Tenant to Landlord, in accordance with the notice provisions set forth in Section 12 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 Leases and Rents only and that, subject to the terms hereof, the Lender assumes no obligation, duty or liability under the Lease.

10. No Release of Landlord. No foreclosure or conveyance or exercise of any right or remedy of Lender under the Security Documents or otherwise shall in any event release the undersigned Landlord from any of the covenants, liabilities or obligations of Landlord under the Lease.

11. Authority of Signatory. If Tenant is a corporation, each individual executing this Agreement on behalf of such corporation represents and warrants that such individual is duly authorized to execute and deliver this Agreement on behalf of such corporation, in accordance with a duly adopted resolution of the Board of Directors of such corporation or otherwise in accordance with the by-laws of said corporation, and that this Agreement is binding upon such corporation in accordance with its terms. If Tenant is a partnership, each individual executing

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this Agreement on behalf of said partnership represents and warrants that such individual is duly authorized to execute and deliver this Agreement on behalf of such partnership in accordance with the partnership agreement for such partnership.

12. 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:

Back to Bed
700 Hilltop Drive
Itasca, IL 60143
Attention: Vito Favia

with a copy to:

N/A

If to Landlord:

TCB-Clybourn Galleria, LLC
c/o Derrick McGavic
5215 Old Orchard Rd., Suite 970
Skokie, IL 60077

with a copy to:

Steve Friedland
626 West Jackson Blvd.
Suite 400
Chicago, IL 60661

If to Lender:

c/o Guggenheim Partners Investment Management, LLC
231 South Bemiston, 14th Floor
St Louis, Missouri 63105

with a copy to:

Christopher T. Nixon
Winstead PC
500 Winstead Building
2728 N. Harwood Street

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Dallas TX, 75201

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

13. 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 (excluding, however, any successor or assign of Lender which is an entity controlled by, under common control with or controlling with Landlord and any entity owned or controlled, directly or indirectly, by any person(s) or entity(ies) now or hereafter holding any interest in Landlord), 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) Time is of the essence with respect to this Agreement.

(f) Tenant has heretofore executed and delivered to Predecessor Landlord a Second Amendment to Lease ("Second Amendment to Lease"), a copy of which has been attached to the estoppel certificate executed and delivered concurrently with Tenant's execution and delivery of this Agreement. Landlord and Lender hereby acknowledge that the Second Amendment to Lease has been duly executed and delivered by Predecessor Landlord on or before the date hereof, that the same is in full force and effect and Lender has consented thereto.

(g) Tenant shall not be deemed in default under this Agreement unless Tenant fails to cure such default following no less than ten (10) days written notice, in the event of a monetary default, and no less than thirty (30) days written notice, in the event of a non-monetary default, specifying the nature of such default (provided, if such non-monetary default is of a nature that it cannot be reasonably cured or remedied within such thirty (30) day period, such thirty day period shall be extended as necessary to allow Tenant to complete the cure thereof so

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long as Tenant commences curing such default within such thirty (30) day period and thereafter proceeds in good faith to cure such default).

(h) This Agreement shall terminate upon the earlier to occur of the termination of the Lease or the termination of Lender's security interest in the Property.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, Lender has executed and ensealed this Agreement as of July 17, 2013.

LENDER:

GUGGENHEIM LIFE AND ANNUITY COMPANY,
a Delaware life insurance company

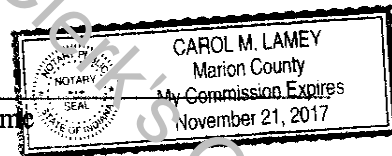
By: [Signature]
Name: James D. Purvis
Title: Chief Operating Officer

STATE OF Indiana
CITY/COUNTY OF Marion, to wit:

The foregoing instrument was acknowledged before me this 17th day of July, 2013, by James D. Purvis as CEO of the Lender executing this Agreement concurrently herewith.

WITNESS my hand and official seal.

[Signature]
Notary Public in and for said
County and State



Print Name

Registration Number _____
My Commission expires: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGES]

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IN WITNESS WHEREOF, Landlord has executed and ensealed this Agreement as of August 5, 2013.

LANDLORD:

TCB – CLYBOURN GALLERIA, LLC,
a Delaware limited liability company

By: Newport Capital Partners Fund I, LP,
a Delaware limited partnership,
its Managing Member

By: Newport Capital I, LLC,
an Illinois limited liability company,
its General Partner

By: TCB-Newport I, L.L.C.,
an Illinois limited liability company,
its Manager

By: Newport Property Investors, LLC,
an Illinois limited liability
company, its Manager

By: 
Derrick E. McGavic
Managing Member

[PLEASE ATTACH STATE SPECIFIC FORM OF EXECUTION AND
ACKNOWLEDGMENT]

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 29th day of July, 2013, before me, the undersigned notary public, personally appeared Derrick E. McGavic, the Managing Member of NEWPORT PROPERTY INVESTORS, LLC, an Illinois limited liability company, the Manager of TCB-NEWPORT I, L.L.C., an Illinois limited liability company, the Manager of NEWPORT CAPITAL I, LLC, an Illinois limited liability company, the General Partner of NEWPORT CAPITAL PARTNERS FUND I, LP, a Delaware limited partnership, the Managing Member of TCB-Clybourn Galleria, LLC, a Delaware limited liability company, who proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Denise G. Corcoran
Notary Public

My Commission Expires:

8/20/15

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Exhibit A

That certain real property located in the City of Chicago, County of Cook, State of Illinois, having a street address of 1835 – 1857 North Clybourn Avenue, Chicago, Illinois.

More particularly described as follows:

Lots 11 through 23 all in Clark and Thomas' Subdivision of Lot 4 in Block 9 in Sheffield's addition to Chicago, situated in the South East ¼ of Section 32, township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. Nos.: 14-32-416-011-0000
14-32-416-012-0000
14-32-416-013-0000
14-32-416-014-0000
14-32-416-015-0000
14-32-416-016-0000
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