

97018128

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
97 MAR 25 AM 8:42
MORRIS W. GANTER
RECORDER

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made and entered into as of the 18th day of March, 1997, by and between NORTHLAKE NURSING AND REHABILITATION CENTER, L.L.C., an Indiana limited liability company ("Tenant"), whose address is 601 West 61st Avenue, Merrillville, Indiana, and MERRILLVILLE HEALTH PROPERTIES, L.L.C., an Indiana limited liability company, (hereinafter referred to as the "Borrower"), whose address is 1700 North Illinois Street, Indianapolis, Indiana and FIRST NATIONAL BANK OF NORTHBROOK ("Lender"), 1300 Meadow Road, Northbrook, Illinois 60062.

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PRELIMINARY STATEMENT OF FACTS:

NOT OFFICIAL!

A. Lender has agreed to make a first mortgage loan (the "Loan") to Borrower, which is to be evidenced by a Mortgage Note ("Note") and secured by a Mortgage and Security Agreement ("Mortgage") on certain real estate as more fully described in Exhibit "A" attached hereto and the improvements thereon ("Premises").

B. The Mortgage is to be recorded in the County of Lake, State of Indiana.

C. The Tenant is the present lessee under a lease dated August 31, 1995 made by Borrower, as landlord, demising a portion of the Premises (the "Leased Premises") (said lease and all amendments thereto being referred to as the "Lease"); said Lease was recorded September 5, 1995 as Document No. ~~95051899~~ 95051895 disclosed by instrument

D. As a condition precedent to Lender's disbursement of Loan Proceeds, Lender has required that Tenant subordinate the Lease and its interest in the Premises in all respects to the lien of the Mortgage.

E. In return, the Lender is agreeable to not disturbing the Tenant's possession of the Premises.

F. The Lender is disbursing the Loan proceeds in reliance upon the agreements contained in this instrument, but for which it would not disburse the Loan.

NOW, THEREFORE, in consideration of the sum of Ten and 00/100 Dollar (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, it is hereby agreed as follows:

1. SUBORDINATION. The Lease, and the rights of Tenant in, to or under the Lease and in and to the Premises, are hereby subjected and subordinated and shall remain in all respects and for all purposes subject, subordinate and junior to the lien of the Mortgage, and

THIS SUBORDINATION AGREEMENT IS BEING RE-RECORDED TO CORRECT THE DOCUMENT REFERENCE OF THE LEASE NOTED AT "C" ABOVE.

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STATE OF INDIANA
LAKE COUNTY
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TICOR TITLE INSURANCE
Crown Point, Indiana

copy # 97018128

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to the rights and interest of the Mortgagee from time to time as holder of the Mortgage, as fully and with the same effect as if the Mortgage had been duly executed, acknowledged and recorded, and the indebtedness secured thereby had been fully disbursed prior to the execution of the Lease or possession of the Premises by Tenant, or its predecessors in interest.

2. PURCHASE OPTIONS. Any options or rights contained in said Lease to acquire title to the Premises are hereby made subject and subordinate to the rights of the Lender under the Mortgage, and any acquisition of title to the Premises made by Tenant during the term of the Mortgage shall be made subordinate and subject to the Mortgage.

3. TENANT NOT TO BE DISTURBED. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any renewal rights therefor in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof.

4. TENANT NOT TO BE JOINED IN FORECLOSURE. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease.

5. TENANT TO ATTORN TO LENDER. If the interests of Borrower shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by it in lieu of or pursuant to a foreclosure, or by any other manner, and Lender succeeds to the interest of this Borrower under the Lease, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the landlord under the Lease, and Tenant does hereby attorn to Lender as its landlord, said attornment to be effective and self-operative immediately upon Lender succeeding to the interest of the Borrower under the Lease without the execution of any further instruments on the part of any of the parties hereto; provided, however, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has succeeded to the interest of the Borrower under the Lease. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

6. LENDER NOT BOUND BY CERTAIN ACTS OF BORROWER. If Lender shall succeed to the interest of Borrower under the Lease, Lender shall not be liable for any

act or omission of any prior landlord (including Borrower); nor subject to any offsets or defenses which Tenant might have against any prior landlord (including Borrower); nor bound by any rent or additional rent which Tenant might have paid for more than the then current installment; nor bound by any amendment or modification of the Lease made without its consent. In the event of a default by Borrower under the Lease or an occurrence that would give rise to an offset against rent or claim against Borrower under the Lease, Tenant will use its best efforts to set off such defaults or occurrence and prior to terminating the Lease, Tenant will send written notice of such defaults or an occurrence to Lender at the address of Lender as set forth above and will give Lender such time as is reasonably required to cure such default or rectify such occurrence, provided Lender uses reasonable diligence to correct the same. Tenant agrees that notwithstanding any provision of the Lease to the contrary, it will not be entitled to cancel the Lease, or to abate or offset against the rent, or to exercise any other right or remedy until Lender has been given notice of default and opportunity to cure such default as provided herein.

7. PROCEEDS OF INSURANCE AND CONDEMNATION AWARDS. That Tenant, its successors or assigns shall agree to assign and release unto Lender:

(a) All of its right, title, interest or claim, if any, in and to the proceeds of all policies of insurance covering the Premises for application upon the indebtedness secured by or other disposition thereof in accordance with the provisions of the Mortgage; and

(b) All of its right, title and interest or claim, if any, in and to all awards or other compensation made for any taking of any part of the Premises to be applied upon the indebtedness secured by or disposed of in accordance with the provisions of the Mortgage.

In the event that following any such application and disposition of the insurance proceeds and condemnation award and other compensation, any balance remains, then such excess shall be made payable to Borrower or Tenant, as their interests may appear.

8. ASSIGNMENT OF LEASE. Borrower will by a separate Assignment of Rents and Leases ("Assignment") assign its interest in the rents and payments due under the Lease to Lender as security for repayment of the Loan. If in the future there is a default by the Borrower in the performance and observance of the terms of the Mortgage, the Lender may, at its option under the Assignment, require that all rents and other payments due under the Lease be paid directly to it. Upon notification to that effect by the Lender, the Borrower hereby authorizes and directs Tenant, and the Tenant agrees, to pay any payments due under the terms of the Lease to Lender. The Assignment does not diminish any obligations of the Borrower under the Lease or impose any such obligations on the Lender.

9. SUCCESSORS AND ASSIGNS. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their heirs, administrators, representatives, successors and assigns, including without limitation each and

every from time to time holder of the Lease or any other person having an interest therein and shall inure to the benefit of the Lender and its successors and assigns.

10. CHOICE OF LAW. This Agreement is made and executed under and in all respects is to be governed by and construed in accordance with the laws of the State where the Premises are situate.

11. CAPTIONS AND HEADINGS. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

12. NOTICES. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing and the mailing thereof by certified mail, or equivalent, to the addresses as set forth above, or to such other places any party hereto may by notice in writing designate shall constitute service of notice hereunder.

13. Neither the Lender nor any of its successors or assigns shall have any obligation to construct or to complete any construction or to perform any work on the Premises or to prepare the Leased Premises or any part thereof for occupancy. Neither shall the Lender or its successors or assigns be obligated to repair, replace, rebuild or restore the Leased Premises and/or the Premises in the event of damage or destruction thereto. Tenant agrees that any improvements made by it to the Leased Premises pursuant to the Lease will be without obligation on the part of Lender, its successors or assigns, to assume any cost or expense relative thereto and that no such improvements(s) shall occur unless satisfactory arrangements are made to ensure that no mechanic's lien, materialmen's lien or other lien shall arise against or attach to the Premises by reason thereof and to ensure that the lien of the Mortgage shall at all times be prior in right to any such lien.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed as of the date first above written.

TENANT:

NORTHLAKE NURSING AND REHABILITATION CENTER, L.L.C., an Indiana limited liability company

By: _____

Eric A. Rothner, Manager

STATE OF ILLINOIS

COUNTY OF COOK

} SS
}

I, Denise Rutledge, a Notary Public in and for said County in the State aforesaid, do hereby certify that ERIC A. ROTINER, Manager of NORTHLAKE NURSING AND REHABILITATION CENTER, L.L.C., an Indiana limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 18 day of March, 1997.

Document is
~~NOT OFFICIAL~~
Denise Rutledge
Notary Public
This Document is the property of
the Lake County Recorder!

My Commission Expires: 10-25-98
My County of Residence: COOK



OFFICIAL SEAL
DENISE RUTLEDGE
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 10-25-03



BORROWER:

MERRILLVILLE HEALTH PROPERTIES,
L.L.C., an Indiana limited liability company

By: _____
Eric A. Rothner, Manager

STATE OF ILLINOIS }
 } SS
COUNTY OF COOK }

I, Denise Rutledge, a Notary Public in and for said County in the State aforesaid, do hereby certify that ERIC A. ROTHNER, Manager of MERRILLVILLE HEALTH PROPERTIES, L.L.C., an Indiana limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 18 day of March, 1997.

Denise Rutledge
Notary Public

My Commission Expires: 10-25-98

My County of Residence: Cook

OFFICIAL SEAL
DENISE RUTLEDGE
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 10-25-99

EXHIBIT A

PARCEL 1:

The Northwest 1/4 of the Northeast 1/4 of Section 9, Township 35 North, Range 8 West of the 2nd Principal Meridian, in the Town of Merrillville, Lake County, Indiana, except the North 733.33 feet thereof.

PARCEL 2:

The East 210 feet of the West 726 feet of the North 733.33 feet of the Northwest 1/4 of the Northeast 1/4 of Section 9, Township 35 North, Range 8 West of the 2nd Principal Meridian, in the Town of Merrillville, Lake County, Indiana, except the North 50 feet taken for road purposes.

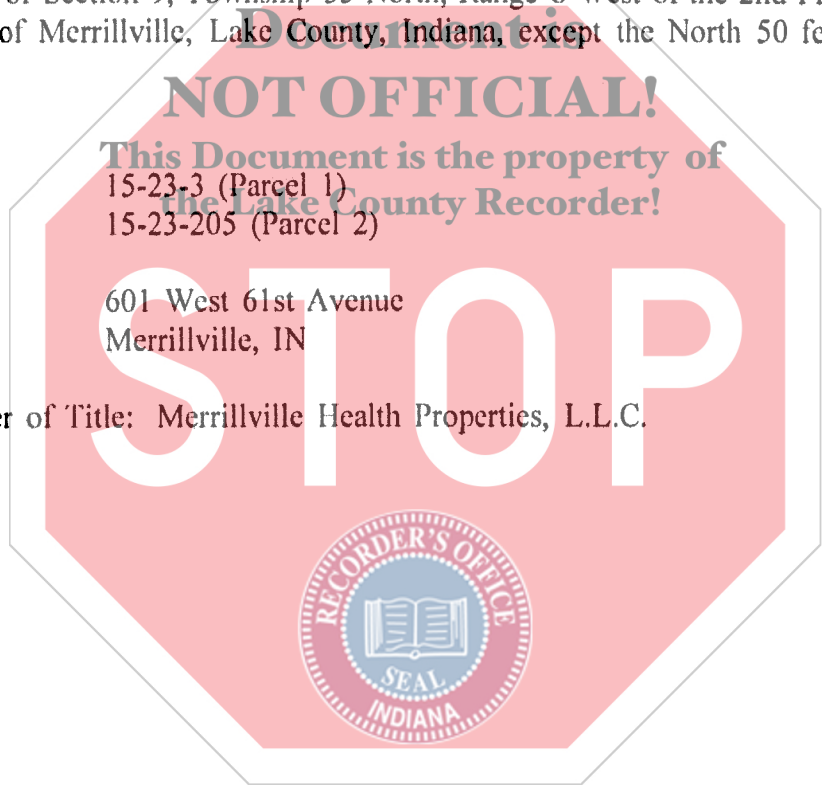
Tax Key No.:

15-23-3 (Parcel 1)
15-23-205 (Parcel 2)

Address:

601 West 61st Avenue
Merrillville, IN

Present Holder of Title: Merrillville Health Properties, L.L.C.



LENDER:

FIRST NATIONAL BANK OF NORTHBROOK,
a national banking association

By: Carol A. Pumphrey
Its: President

STATE OF ILLINOIS }
 } SS
COUNTY OF COOK }

I, Mary M. Castronovo a Notary Public in and for the County and State aforesaid, do hereby certify that Carol A. Pumphrey and _____, respectively, the _____ President and _____ Secretary of FIRST NATIONAL BANK OF NORTHBROOK, a national banking association, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ President and _____ Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said _____ Secretary did also then and there acknowledge that he, as custodian of the corporate seal of said corporation, did affix the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19 day of March, 1997.

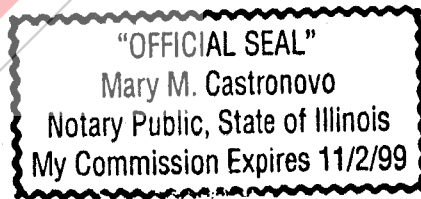


Mary M. Castronovo
Notary Public

My Commission Expires:

11-2-99

My County of Residence: Cook



THIS DOCUMENT WAS DRAFTED BY:

Stephen J. Schostok
Tianne M. Bataille
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