

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

CM 020050847  
THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made and entered into as of the 28<sup>th</sup> day of FEBRUARY, 2006, by and among ADVANCED CENTER FOR PAIN MANAGEMENT, LLC INDIANA LIMITED LIABILITY CO. (hereinafter referred to as the "Tenant"), Lake County Trust Company as Trustee under agreement dated December 6, 1978 and known as Trust #2780, a Indiana Land Trust (hereinafter referred to as the "Borrower"), American Centurion Life Assurance Company, a New York corporation (hereinafter referred to as the "Lender"), whose address is c/o RiverSource Investments, LLC, 25540 Ameriprise Financial Center, Minneapolis, Minnesota 55474.

**PRELIMINARY STATEMENT OF FACTS:**

WHEREAS, Lender is the owner and holder of that certain **Mortgage/Deed of Trust** (hereinafter referred to as the "Mortgage") given by Borrower, to secure the payment of certain indebtedness therein described including a Mortgage which Mortgage is dated as of even date herewith, and may be filed for record in the Office of the Recorder in and for LAKE County, State of Indiana concurrently with the filing for record of this Agreement and constituting a first mortgage lien on that certain real property (hereinafter called the "Mortgaged Premises") in the City of Merrillville, State of Indiana, more fully described therein; and

WHEREAS, Tenant has entered into a Lease Agreement (hereinafter referred to as the "Lease") dated April 29, 2003, made by Borrower, as Landlord, covering all or a part of the Mortgaged Premises being more fully described on Exhibit A attached hereto and made a part hereof (the "Premises").

WHEREAS, Borrower, Tenant and Lender confirm their understanding with respect to the Lease and the Mortgage.

NOW, THEREFORE, in consideration of the sum of One and 00/100 Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each party, it is hereby agreed as follows:

1. **SUBORDINATION.** The parties hereto agree and acknowledge that the Lease, and Tenant's leasehold estate created thereby, including all rights and options to purchase the Premises, shall be and are completely and unconditionally subject and subordinate to the lien of the Mortgage and to all the terms, conditions and provisions thereof, to all advances made or to be made there under, and to any renewals, extensions, modifications, increases or replacements thereof.
2. **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 therefore 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. Provided, however, Lender shall not be bound by any right under the Lease or otherwise, of Tenant to acquire title to the Mortgaged Premises or any part thereof.
3. **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 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 required by law to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease.
4. **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 the 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

For Info See Doc #

2006-025966

Chicago Title Insurance Company

2006 025966

2006 MAR 30 AM 12

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

MICHAEL A. ...  
RECORDER

Handwritten initials and numbers: 567, 29, 19, 10, 10

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option therefore 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 Mortgagor 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 extensions and renewals shall be and are the same as now set forth therein.

5. **LENDER NOT BOUND BY CERTAIN ACTS OF BORROWER.** If Lender shall succeed to the interest of Borrower under the Lease by foreclosure or conveyance in lieu thereof, Lender shall not be: (a) liable for any act or omission of any prior landlord (including Borrower); (b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Borrower); (c) bound by any rent or additional rent which Tenant might have paid for more than the then current installment; (d) bound by any early termination, amendment or modification of the Lease made without its consent; (e) bound by any provisions of the Lease regarding the commencement or completion of any construction; (f) bound by any provision of the Lease restricting the use of other properties owned by Lender, as landlord, for purposes which compete with Tenant; (g) liable for the return of any security deposit except to the extent actually received by Lender from Borrower; nor (h) bound by any option to Tenant to purchase the Mortgaged Premises or any part thereof. 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 against rents currently due Borrower and will give Lender notice of such defaults or occurrence 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.
6. **HAZARDOUS WASTE.** Tenant: (a) is not presently engaged in nor does it presently permit; (b) has not at any time in the past engaged in nor permitted; (c) has no knowledge that any third person or entity has engaged in or permitted; and (d) will not in the future engage in or permit any operations or activities upon, or any use or occupancy of the Premises, or any portion thereof, for the purpose of or in any way involving the handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether legal or illegal, accidental or intentional) of any hazardous substances, materials or wastes, or any wastes regulated under any local, state or federal law.
7. **ASSIGNMENT OF LEASE.** Borrower has by a separate Assignment of Leases and Rents (hereinafter referred to as the "Assignment of Leases") assigned 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 of Leases, 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 of Leases does not diminish any obligations of the Borrower under the Lease or impose any such obligations on the Lender.
8. **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.
9. **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.

10. 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.
11. 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 Tenant at the Leased Premises and to Lender at 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.
12. DATING OF AGREEMENT: Tenant hereby authorizes Lender to date this Agreement with the same date as that of the Mortgage.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against LAKE COUNTY TRUST COMPANY on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

Nothing contained herein shall be construed as creating any liability on LAKE COUNTY TRUST COMPANY, personally under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Indiana Responsible Property Transfer Law (the Act) as amended from time to time or any other Federal, State or local law, rule or regulation. LAKE COUNTY TRUST COMPANY, personally is not a "Transferor or Transferee" under the Act and makes no representations concerning any possible environmental defects. In making any warranty herein the Trustee is relying solely on information furnished to it by the beneficiaries and not of its own knowledge and specifically exculpates itself from any liabilities, responsibilities or damages as a result of including any warranty in this instrument.

The information contained in this instrument has been furnished the undersigned by the beneficiaries under aforesaid Trust and the statements made therein are made solely in reliance thereon and no responsibility is assumed by the undersigned, in its individual capacity for the truth or accuracy of the facts herein stated.



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

WITNESSES:

Jay S. Salby  
Maria S. Salby  
\_\_\_\_\_  
\_\_\_\_\_

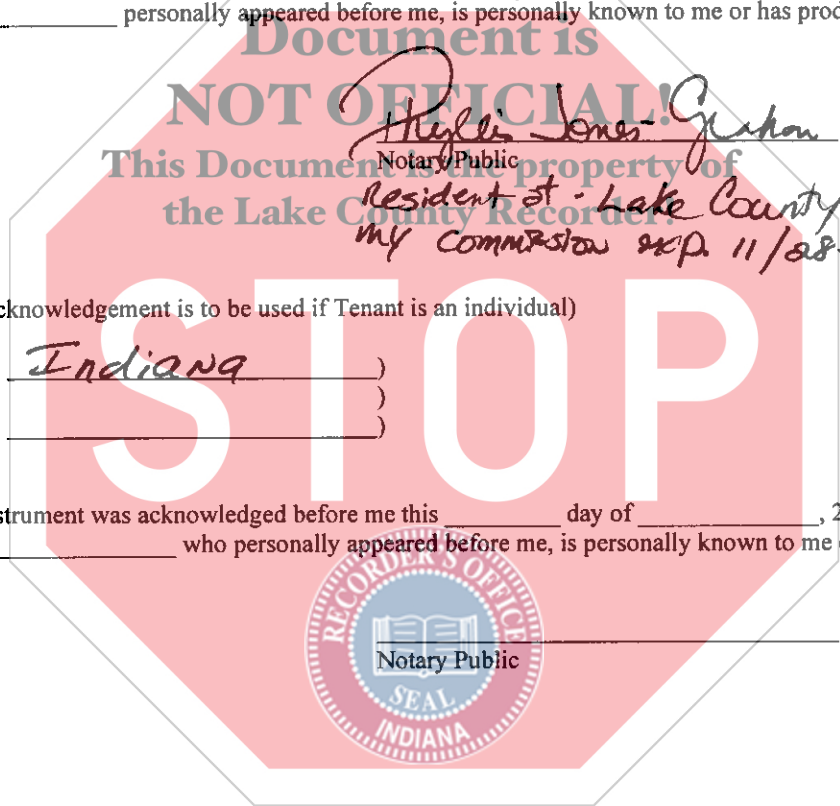
TENANT:

ADVANCED CENTER FOR PAIN MANAGEMENT, LLC  
an INDIANA LIMITED LIABILITY COMPANY  
By: F. M. Rahman  
Its: AUTHORIZED MEMBER

(The following acknowledgement is to be used if Tenant is a partnership, limited liability company or corporation)

State of INDIANA )  
County of LAKE )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of FEBRUARY, 2006 by FAISAL RAMAN, the AUTHORIZED MEMBER of ADVANCED CENTER FOR PAIN MANAGEMENT LLC, an INDIANA LIMITED LIABILITY Co on behalf of the COMPANY personally appeared before me, is personally known to me or has produced identification.



(The following acknowledgement is to be used if Tenant is an individual)

State of Indiana )  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005 by \_\_\_\_\_ who personally appeared before me, is personally known to me or has produced identification.

WITNESSES:

Trustee under agreement dated December 6, 1978 and known as Trust #2780

BORROWER: Lake County Trust Company as

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

a

By:

*Elaine M. Sievers*

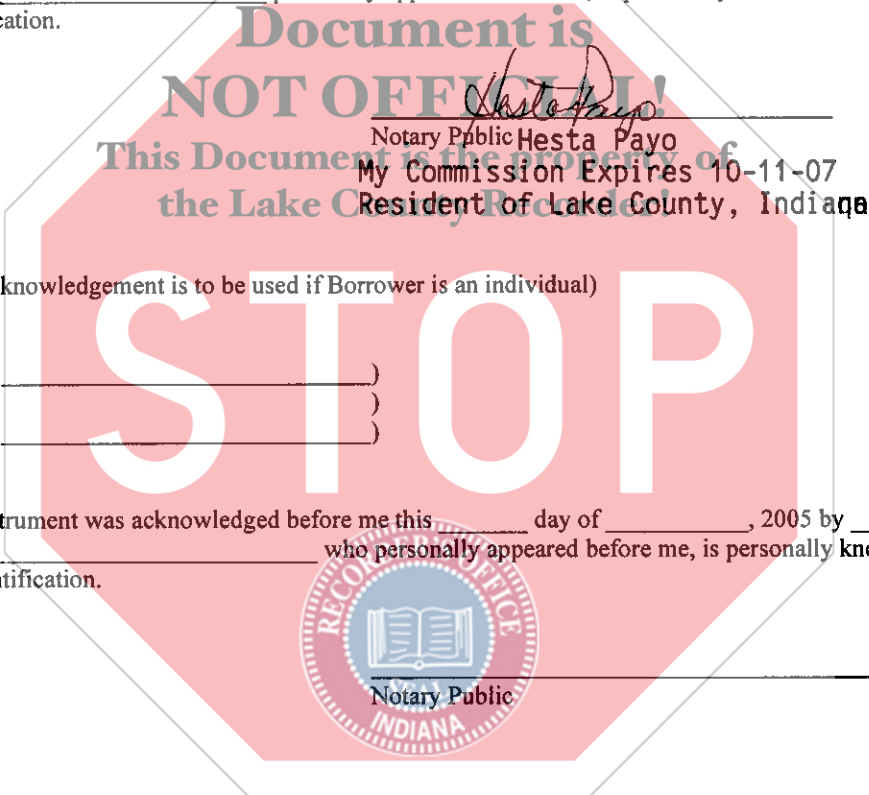
Its:

ELAINE M. SIEVERS  
TRUST OFFICER

(The following acknowledgement is to be used if Borrower is a partnership, limited liability company or corporation)

State of Indiana )  
County of Lake )

The foregoing instrument was acknowledged before me this 24th day of March, 2005 by Elaine M. Sievers the Trust Officer of LAKE COUNTY TRUST COMPANY, an Indiana Corporation on behalf of the Borrower personally appeared before me, is personally known to me or has produced identification.



(The following acknowledgement is to be used if Borrower is an individual)

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005 by \_\_\_\_\_ who personally appeared before me, is personally known to me or has produced identification.

WITNESSES:

Assurance Company

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LENDER: American Centurion Life

By:

Marilyn J. Vogel

Its:

Assistant Vice President

By:

Elizabeth St. Julien

Its:

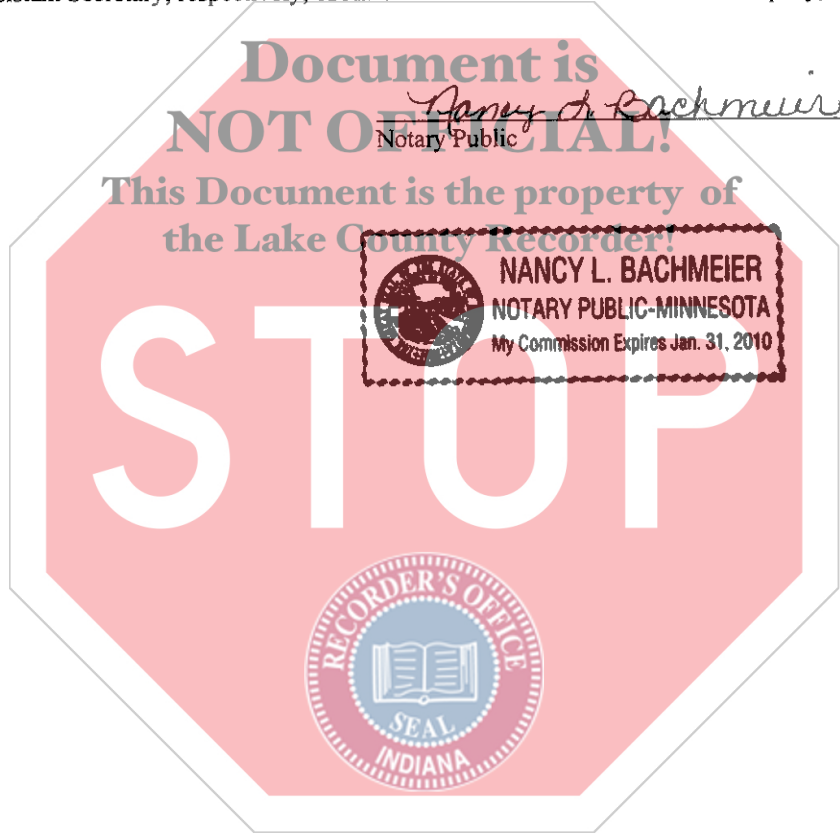
Assistant Secretary

(The following acknowledgment is to be used by Lender)

State of Minnesota )

County of Hennepin )

The foregoing instrument was acknowledged before me this 3 day of March, 2006 by Marilyn J. Vogel and Elizabeth J. St. Julien, the Assistant Vice President and Assistant Secretary, respectively, of American Centurion Life Assurance Company, a New York corporation.



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Part Block "G", Environ Executive Center, more particularly described as: Beginning at the Northeast corner of said Block "G"; thence South 00 degrees 00 minutes 40 seconds East, 269.01 feet to the Southeast corner of said Block "G"; thence South 73 degrees 48 minutes 48 seconds West along the South line of said Block "G" a distance of 331.37 feet; thence North 22 degrees 55 minutes 00 seconds West 317.18 feet to the Northerly line of said Block "G"; thence North 67 degrees 05 minutes 00 seconds East, 99.2 feet to a point of curve; thence Easterly along a curve to the right with a radius of 571.36 feet for a distance of 357.46 feet to the point of beginning, as shown in Plat Book 45, page 37, in Lake County, Indiana.

