

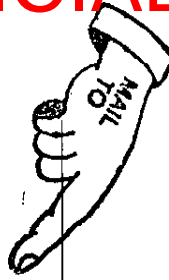
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Cook County Recorder 65.50

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Sachnotf + Wacker, Ltd.  
30 S. Wacker Dr. #2900  
Chicago, IL 60606  
Attn: M. Dobranski



Space above this line for recorder's use only.

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

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement"), is made as of this 1st day of November, 1999, by and among **SOUTHWEST SUBURBAN HEALTHCARE CENTER, L.L.C.**, a Delaware limited liability company ("Sublessee"), **FAIRHAVEN OF CHICAGO RIDGE BUILDING, L.L.C.**, an Illinois limited liability company ("Sublessor"), and **CORUS BANK, N.A.** ("Corus"), **CANADA LIFE INSURANCE COMPANY OF AMERICA** ("Canada Life") (Corus and Canada Life are individually and/or collectively referred to as "Lenders"), in Chicago, Illinois.

**RECITALS**

A. Corus is the owner and holder of that certain Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated October 30, 1998, recorded with the Cook County Recorder's Office on November 24, 1998, as Document No. 08062615 (the "**Corus Mortgage**"), covering the land and building commonly known as Fairhaven of Chicago Ridge, 10602 Southwest Highway, Chicago Ridge, Illinois 60415 and legally described in Exhibit A attached hereto and incorporated herein (the "**Property**").

B. Canada Life is the owner and holder of that certain Mortgage dated March 14, 1990, recorded with the Cook County Recorder's Office on March 15, 1990 as Document 90116813 (the "**Canada Life Mortgage**"), covering the Property. The Corus Mortgage is subordinate to the Canada Life Mortgage pursuant to that certain Subordination Agreement recorded November 24, 1998 with the Cook County Recorder's Office as Document 08062617. The Corus Mortgage and Canada Life Mortgage are collectively referred to as the "**Mortgages**." The Mortgages and any and all other documents or instruments related thereto, and all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, are hereinafter collectively referred to as the "**Loan Documents**."

C. Sublessor leased the Property from **Chicago Ridge Real Estate Limited Partnership**, an Illinois limited partnership and **American National Bank And Trust Company Of Chicago, As Successor Trustee To Comerica Bank Illinois, As Successor Trustee To Manufacturers Affiliated Trust Company**, as successor trustee to Affiliated Bank/North Shore National, as Trustee u/t/a dated September 1, 1988, a/k/a Trust No. 996 (jointly referred to as "**Prime Lessor**") pursuant to the terms of that certain Lease Agreement dated February 19, 1993, as modified, amended or extended from time to time ("**Prime Lease**").

D. Sublessor, pursuant to that certain Sublease of even date herewith by and between it and Sublessee ("**Sublease**") subleased the Property to Sublessee.

E. Prime Lessor, pursuant to that certain Chicago Ridge Nursing Center Option Agreement dated effective March 1, 1993 (the "**Option**") granted to Sublessor, the right and option to purchase the Property at any time on or after February 1, 2005.

F. Pursuant to that certain Assignment of Chicago Ridge Option Agreement (the "**Assignment**") dated of even date herewith, Sublessor and First Chicago Trust Company of Illinois, not personally, but as Trustee u/t/a dated February 25, 1993, a/k/a Trust No. RV-011907 ("**Trustee**") (Sublessor and Trustee collectively referred to as "**Assignor**") assigned to Sublessee as "**Assignee**" the Option. The Prime Lease, Sublease, Option and Assignment are referred to herein collectively as the "**Property Agreements**."

### AGREEMENT

For good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. **Subordination.** The parties hereby agree that the Property Agreements are and shall at all times be subject and subordinate in all respects to the lien of the Mortgages, to all indebtedness and obligations secured thereby, and to all renewals, modifications, extensions, substitutions, rearrangements and replacements thereof.

2. **Non-Disturbance.** a) Lenders agree that, provided Sublessor pays to Prime Lessor all amounts due under the Prime Lease in accordance with the terms and provisions set forth therein and subject to the terms and conditions of this Agreement, if any action or proceeding is commenced by Lenders or at Lenders' behest for the foreclosure of the Mortgages or either of them or the sale of the Property or other realization under the Loan Documents, whether by foreclosure, deed in lieu of foreclosure or in any other proceedings made or brought to enforce the rights of Lenders, or by any successor to Lenders, Sublessor shall not be named as a party therein (unless required by law to properly foreclose upon the Mortgages), and the sale of the Property in any such action or proceeding and the exercise by Lenders of any such action or proceeding and of their other rights under the Mortgages shall be made subject to all rights of Sublessor under the Prime Lease, Assignor under the Option, and Assignee under the Assignment, provided that at the time of any such action or proceeding and at the time of any such sale or exercise of any such other rights, Sublessor shall not be declared in default, and no event shall have occurred which with the giving of notice or passage of time or both could result in a default, under any of the terms, covenants or conditions of the Option, Assignment or Prime Lease. Notwithstanding the foregoing, in the event Sublessor fails for any reason to pay any rent or additional rent which is due under the Prime Lease in accordance with the terms and provisions set forth therein, subject to any applicable grace or cure period set forth in the Prime Lease and to Sublessor's right to set off certain amounts against rent as specifically set forth, and in accordance with and pursuant to, the terms and provisions of Section 4.1 and Section 19.7 of the Prime Lease, then the non-disturbance provisions of this Section 2 shall immediately be of no further force or effect with respect to Sublessor, and Lenders shall have the right to exercise any or all of the remedies of Prime Lessor as set forth in the Prime Lease, and, in addition, at

Lenders' option and notwithstanding anything in the Prime Lease or this Agreement to the contrary, the Prime Lease shall terminate upon notice from Lenders to Sublessor.

b) Lenders agree that, provided Sublessee pays all amounts due under the Sublease in accordance with the terms and provisions set forth therein, and subject to the terms and conditions of this Agreement, if any action or proceeding is commenced by Lenders or at Lenders' behest for the foreclosure of the Mortgages or either of them or the sale of the Property or other realization under the Loan Documents, whether by foreclosure, deed in lieu of foreclosure or in any other proceedings made or brought to enforce the rights of Lenders, or by any successor to Lenders, Sublessee shall not be named as a party therein (unless required by law to properly foreclose upon the Mortgages), and the sale of the Property in any such action or proceeding and the exercise by Lenders of any such action or proceeding and of their other rights under the Mortgages shall be made subject to all rights of Sublessee under the Sublease, and Assignee under the Assignment, provided that at the time of any such action or proceeding and at the time of any such sale or exercise of any such other rights, Sublessee shall not be declared in default, and no event shall have occurred which with the giving of notice or passage of time or both could result in a default, under any of the terms, covenants or conditions of the Sublease or Assignment. Notwithstanding the foregoing, in the event Sublessee fails for any reason to pay any rent or additional rent which is due under the Sublease in accordance with the terms and provisions set forth therein, subject to any applicable grace or cure period set forth in the Sublease and to Sublessee's right to set off certain amounts against rent as specifically set forth, and in accordance with and pursuant to, the terms and provisions of Section 4.1 and Section 19.7 of the Sublease, then the non-disturbance provisions of this Section 2 shall immediately be of no further force or effect with respect to Sublessee, and Lenders shall have the right to exercise any or all of the remedies of Sublessor as set forth in the Sublease, and, in addition, at Lenders' option and notwithstanding anything in the Sublease, Prime Lease or this Agreement to the contrary, the Sublease and Prime Lease shall terminate upon notice from Lenders to Sublessee.

3. **Attornment.** (a) If the Interests of Prime Lessor in the Property and under the Prime Lease or any portion thereof are acquired by Lenders (or either of them), whether by purchase and sale, foreclosure, deed in lieu of foreclosure or in any other proceeding made or brought to enforce the rights of Lenders, or by any successor to Lenders, including without limitation any purchaser at a foreclosure sale, Sublessor shall be bound to Lender, its successors and assigns, under all of the terms, covenants and conditions of the Prime Lease for the balance of the term thereof, with the same force and effect as if they were named as Prime Lessor under the Prime Lease, including without limitation, Sublessor's covenant to pay all rent and additional rent due under the Prime Lease to Lender, and Sublessor does hereby attorn to Lenders, its successors and assigns, as its Prime Lessor, said attornment to be effective and self-operative immediately upon Lenders' or their successors or assigns succeeding to the interests of Prime Lessor in the Property and under the Prime Lease, without the execution of any other or further instruments on the part of any party hereto. Sublessor covenants and agrees from time to time to do all acts and to execute all instruments as may reasonably be requested by Lenders for the purposes of fully carrying out and effectuating the purpose and intent of this Agreement, whether by filing with any public office or agency or otherwise.

(b) If the interests of Prime Lessor in the Property and under the Prime Lease or any portion thereof are acquired by Lenders (or either of them), whether by purchase and sale,

foreclosure, deed in lieu of foreclosure or in any other proceeding made or brought to enforce the rights of Lenders, or by any successor to Lenders, including without limitation any purchaser at a foreclosure sale, and if the interests of Sublessor in the Property, if any, and under the Sublease or any portion thereof are thereafter acquired by Lenders, Sublessee shall be bound to Lender, its successors and assigns, under all of the terms, covenants and conditions of the Sublease for the balance of the term thereof, with the same force and effect as if they were named as Landlord under the Sublease, including without limitation, Sublessee's covenant to pay all rent and additional rent due under the Sublease to Lenders, and Sublessee does hereby attorn to Lender, its successors and assigns, as its Landlord, said attornment to be effective and self-operative immediately upon Lenders or their successors or assigns succeeding to the interests of Sublessor in the Property and under the Sublease, without the execution of any other or further instruments on the part of any party hereto. Sublessee covenants and agrees from time to time to do all acts and to execute all instruments as may reasonably be requested by Lenders for the purposes of fully carrying out and effectuating the purpose and intent of this Agreement, whether by filing with any public office or agency or otherwise.

4. **Limitation on Lender's Liability.** (a) If Lenders (or either of them) succeed to the interests of Prime Lessor in the Property and under the Prime Lease, Lenders shall thereupon be bound to Sublessor under all of the terms, covenants and conditions of the Prime Lease, and Sublessor shall, from and after Lenders' succession to the interests of Prime Lessor, have the same rights and remedies against Lenders for breach of the Prime Lease that Sublessor would have had under the Prime Lease against Prime Lessor if Lenders had not succeeded to the interests of Prime Lessor; provided, however, that Lenders shall not be: (i) liable for any act or omission of any prior Landlord (including without limitation Prime Lessor); (ii) subject to any offsets or defenses which Sublessor might have against any prior Landlord (including without limitation Prime Lessor), except for real estate taxes which have been paid by Sublessor to Prime Lessor pursuant to the terms of the Prime Lease prior to the date Lenders succeed to the interests of Prime Lessor in the Property and under the Prime Lease, provided that Sublessor can deliver to Lenders evidence reasonably satisfactory to Lenders that all such real estate taxes have been paid by Sublessor to Prime Lessor, and except for Sublessor's right to set off amounts withheld, deducted or recouped from Sublessor by the Illinois Department of Public Aid ("IDPA") pursuant to Section 19.7 of the Lease, provided Prime Lessor has not paid to Sublessor an amount equal to the sum actually withheld, deducted or otherwise recouped from Sublessor; (iii) bound by any surrender, cancellation, agreement or modification of the Lease made without the prior written consent of Lenders, except for Sublessee's exercise of its option to purchase the Property pursuant to and in accordance with the terms of the Option; (iv) bound by or to the terms and provisions of Article XXXVI of the Prime Lease with respect to any litigation, suit or proceeding which is commenced, pending or filed by or against Prime Lessor and/or Sublessor prior to the date Lender succeeds to the interests of Prime Lessor in the Property and under the Lease; provided, however, that from and after such date, Lender shall be bound by the provisions of Article XXXVI only with respect to any litigation, suit or proceeding which is brought by Lender against Sublessor, and Lender is not the prevailing party thereunder; or (v) bound to return Sublessor's security deposit, if any, until such deposit has come into Lender's (or such successor's) actual possession and Sublessor would be entitled to such security deposit under the Prime Lease. Lenders shall be bound by Sublessor's payment of no more than one (1) month's rent in advance under the Prime Lease unless otherwise approved by Lender.

(b) If Lenders (or either of them) succeeds to the interests of Sublessor in the Property, if any, and under the Sublease, Lenders shall thereupon be bound to Sublessee under all of the terms, covenants and conditions of the Sublease, and Sublessee shall, from and after Lenders succession to the interests of Sublessor, have the same rights and remedies against Lenders for breach of the Sublease that Sublessee would have had under the Sublease against Sublessor if Lenders had not succeeded to the interests of Sublessor; provided, however, that Lenders shall not be: (i) liable for any act or omission of any prior Landlord (including without limitation Sublessor); (ii) subject to any offsets or defenses which Sublessee might have against any prior Landlord (including without limitation Sublessor), except for real estate taxes which have been paid by Sublessee to Sublessor pursuant the terms of the Sublease prior to the date Lenders succeed to the interests of Sublessor in Property and under the Sublease, provided that Sublessee can deliver to Lenders evidence reasonably satisfactory to Lenders that all such real estate taxes have been paid by Sublessee to Sublessor, and except for Sublessee's right to set off amounts withheld, deducted or recouped from Sublessee by the IDPA under the terms of the Sublease, provided Sublessor has not paid to Sublessee an amount equal to the sum actually withheld, deducted or otherwise recouped from Sublessee; (iii) bound by or to the terms and provisions of Article XXXVI of the Prime Lease, as such Article has been incorporated by reference into the Sublease; (iv) bound by any surrender, cancellation, agreement or modification of the Sublease made without the prior written consent of Lenders, except for extensions of the Sublease on terms, including rent, no less favorable to Sublessee than the existing terms under the Sublease; or (v) bound to return Sublessee's security deposit, if any, until such deposit has come into Lenders (or such successors) actual possession and Sublessee would be entitled to such security deposit under the Sublease. Lenders shall be bound by Sublessee's payment of no more than one (1) month's rent in advance under the Prime Lease or the Sublease, as the case may be, unless otherwise approved by Lender.

5. **No Modification.** Sublessor and Sublessee agree that during the term of the Sublease or any extension thereof, neither Sublessor nor Sublessee will enter into any amendment or modification of the Property Agreements, as applicable, and except for (i) extensions of the Sublease on terms no less favorable to Sublessee than the existing terms under the Sublease, and (ii) Sublessee's exercise of its option to purchase the Property pursuant to and in accordance with the terms of the Option, will not cancel or surrender any of the Property Agreements, as applicable, without in any such instance Lenders' prior written consent.

6. **Non Reduction of Rent.** The Sublessor and Sublessee represent and warrant that they have not heretofore and will not hereafter enter into any agreement between themselves or with third parties which in any way reduce the rental below its current monthly rate or allow an abatement in rental which would result in the failure to pay monthly rental payments to Lenders or their respective successors in the event a default occurs in the obligation of the Prime Lessor to Lenders.

7. **No Merger.** Unless Lenders shall otherwise expressly agree in writing, and except for Sublessee's exercise of its option to purchase the Property pursuant to and in accordance with the terms of the Option, Prime Lessor's interest in the Property and the leasehold estates created by the Prime Lease and the Sublease shall not merge but shall remain separate and distinct, notwithstanding the union of said estates either in Prime Lessor, in Sublessor, in Sublessee, or in any third party, by purchase, assignment or in any other manner.

8. **Representations and Warranties.** a) Sublessor hereby represents and warrants to Lenders that: (a) the Sublease has been properly executed and is in full force and effect without amendment or modification; (b) the monthly base rent is as set forth on Exhibit B hereto and incorporated herein by reference, and Sublessee pays Additional Base Rent and Bonus Rent as set forth therein; (c) Sublessee will pay a security deposit in the amount of \$346,500.00 on which Subessor has no obligation to segregate or pay any interest; (d) the Option has been properly assigned by Sublessor and accepted by Sublessee, and is in full force and effect without amendment or modification; (e) there are no other representations, warranties, agreements, concessions, commitments or other understandings between Sublessee and Sublessor regarding the Property other than those set forth in the Property Agreements; (f) all construction required by the Sublease to be made by Sublessor has been completed, Sublessee has accepted and is in full and complete possession of the Property and any payments, credits or abatements required to be given by Sublessor to Sublessee have been given; (g) no installment of rent under the Sublease other than current monthly rent has been paid more than 30 days in advance and there are no installments of rent or other charges payable by Sublessee past due; (h) except as provided herein and in the Property Agreements, neither the Sublease nor the Option has been assigned or subleased by Sublessee; (i) to the best of its knowledge and without waiving any of its rights, neither Sublessor nor Sublessee is in default under the Sublease or the Option and no event has occurred which, with the giving of notice or passage of time, or both, could result in a default by Sublessee or Sublessor; (j) to the best of its knowledge and without waiving any of its rights, Sublessee currently has no existing defenses, offsets, liens, claims or credits against the rentals under the Sublease or against the enforcement of the Sublease by Sublessor; (k) except as provided herein and in the Property Agreements, Sublessee has not been granted any options to extend or terminate the term of the Sublease earlier than February 1, 2023, any rights of first refusal on any other space in the Property, or any options or rights of first refusal to purchase the Property or any part thereof; (l) Sublessor has not received notice of violation of any federal, state, county or municipal laws, regulations, ordinances, orders or directives relating to the use or condition of the Property other than licensure and certification deficiencies which are normal and customary in the ordinary course of operating a nursing home business which have been timely corrected; (m) except for storage and use of bio-medical wastes in compliance with all applicable federal, state or local statutes, rules or regulations, have been disposed, stored or treated on or about the Property by Sublessor or to the knowledge of Sublessor, by any other party; (n) Sublessor has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of the Lease or of the rents secured therein, or of the Option; and (o) there has not been filed by or against Sublessor a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws with respect to Sublessor.

b) Sublessee hereby represents and warrants to Lenders that: (a) the Sublease has been properly executed and is in full force and effect without amendment or modification; (b) the monthly base rent is as set forth on Exhibit B hereto and incorporated herein by reference, and Sublessee pays Additional Base Rent and Bonus Rent as set forth therein; (c) Sublessee will pay a security deposit in the amount of \$346,500.00 on which Subessor has no obligation to segregate or pay any interest; (d) the Option has been properly assigned by Sublessor and accepted by Sublessee, and is in full force and effect without amendment or modification; (e) there are no other representations, warranties, agreements, concessions, commitments or other understandings between Sublessee and Sublessor regarding the Property other than those set

forth in the Property Agreements; (f) all construction required by the Sublease to be made by Sublessor has been completed, Sublessee has accepted and is in full and complete possession of the Property and any payments, credits or abatements required to be given by Sublessor to Sublessee have been given; (g) no installment of rent under the Sublease other than current monthly rent has been paid more than 30 days in advance and there are no installments of rent or other charges payable by Sublessee past due; (h) except as provided herein and in the Property Agreements, neither the Sublease nor the Option has been assigned or subleased by Sublessee; (i) to the best of its knowledge and without waiving any of its rights, neither Sublessor nor Sublessee is in default under the Sublease or the Option and no event has occurred which, with the giving of notice or passage of time, or both, could result in a default by Sublessee or Sublessor; (j) to the best of its knowledge and without waiving any of its rights, Sublessee currently has no existing defenses, offsets, liens, claims or credits against the rentals under the Sublease or against the enforcement of the Sublease by Sublessor; (k) except as provided herein and in the Property Agreements, Sublessee has not been granted any options to extend or terminate the term of the Sublease earlier than February 1, 2023, any rights of first refusal on any other space in the Property, or any options or rights of first refusal to purchase the Property or any part thereof; (l) Sublessee has not received notice of violation of any federal, state, county or municipal laws, regulations, ordinances, order or directives relating to the use or condition of the Property other than licensure and certification deficiencies which are normal and customary in the ordinary course of operating a nursing home business which have been timely corrected; (m) except for storage and use of bio-medical wastes in compliance with all applicable federal, state or local statutes, rules or regulations, have been disposed, stored or treated on or about the Property by Sublessee or to the knowledge of Sublessee, by any other party; (n) Sublessee has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of the Lease or of the rents secured therein, or of the Option; and (o) there has not been filed by or against Sublessee a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws with respect to Sublessee.

9. **Notice to Lender.** (a) Sublessor shall give Lenders copies of all notices and other communications given by Sublessor to Prime Lessor relating to (a) defaults on the part of Prime Lessor under the Prime Lease, (b) any violations of any ordinances, statutes, laws, rules, codes, regulations or requirements of any governmental agency have jurisdiction over the Property, and (c) any proposed or actual assignment or subletting of all or any portion of the Property. Prior to pursuing any remedy available to Sublessor under the Prime Lease, at law or in equity which Sublessor may have as a result of any failure of Prime Lessor to perform or observe any covenant, condition, provision of obligation to be performed or observed by Prime Lessor under Prime Lease (any such failure hereunder referred to as a "**Prime Lessor Default**"), Sublessor shall provide Lender with a notice of Prime Lessor's Default (the "**Sublessor's Notice**"), which notice shall be send concurrently with any similar notice to Prime Lessor, specifying the nature thereof and the remedy which Sublessor will elect under the terms of the Prime Lease or otherwise. Lenders shall have the right but not the obligation to cure such default and shall have such time period as is available under the Prime Lease, such period commencing on the date of Sublessor's Notice, within which to commence to cure Prime Lessor's Default and diligently proceed to complete such cure at all times thereafter. Sublessor shall not pursue any remedy available to it as a result of any Prime Lessor's Default unless Lenders fail to commence

within the time period set forth above or thereafter fails to diligently pursue a cure of any Prime Lessor's Default.

(b) Sublessee shall give Lenders copies of all notices and other communications given by Sublessee to Sublessor relating to (a) defaults on the part of Sublessor under the Sublease, (b) any violations of any ordinances, statutes, laws, rules, codes, regulations or requirements of any governmental agency have jurisdiction over the Property, and (c) any proposed or actual assignment or subletting of all or any portion of the Property. Prior to pursuing any remedy available to Sublessee under the Sublease, at law or in equity which Sublessee may have as a result of any failure of Sublessor to perform or observe any covenant, condition, provision of obligation to be performed or observed by Sublessor under Sublease (any such failure hereunder referred to as a "**Sublessor Default**"), Sublessee shall provide Lender with a notice of Sublessor's Default (the "**Sublessee's Notice**"), which notice shall be send concurrently with any similar notice to Prime Lessor, specifying the nature thereof and the remedy which Sublessee will elect under the terms of the Sublease or otherwise. Lenders shall have the right but not the obligation to cure such default and shall have such time period as is available under the Sublease, such period commencing on the date of Sublessee's Notice, within which to commence to cure Sublessor's Default and diligently proceed to complete such cure at all times thereafter. Sublessee shall not pursue any remedy available to it as a result of any Sublessor's Default unless Lenders fail to commence within the time period set forth above or thereafter fails to diligently pursue a cure of any Sublessor's Default.

10. **Access.** Notwithstanding the provisions of the Sublease, if Sublessee shall not have provided Lenders with access to the Property, and if access is required to remedy such default, the period of time set forth in the Sublease in which to remedy same shall not commence until such access is provided to Lenders.

11. **Notices.** Notices shall be in writing and shall be given by personal delivery, overnight courier, or by mail addressed as set forth below. Notice by personal delivery shall be deemed effective upon the delivery of such notice to the party for whom it is intended at the recipient's address. Notice by overnight courier shall be deemed effective twenty-four (24) hours after deposit with a commercial courier or delivery service for overnight delivery within the United States, or on the second (2<sup>nd</sup>) business day after deposit with an international second day delivery service (as applicable). Notice by mail shall be made by certified or registered mail, return receipt requested, postage prepaid, properly stamped, sealed and addressed, and shall be deemed effective on the second (2<sup>nd</sup>) business day after deposit in the United States mail. Any party may given notice of any change of address in accordance with the notice procedures described herein.

TO SUBLESSOR:

Fairhaven of Chicago Ridge Building, L.L.C.  
150 Fencil Lane  
Hillside, Illinois 60162  
Attention: Eric Rothner



With a copy to: Schwartz & Freeman  
401 North Michigan Avenue  
Suite 1900  
Chicago, Illinois 60611  
Attention: Judith S. Sherwin

TO SUBLESSEE: Southwest Suburban Healthcare Center, L.L.C.  
c/o CarePlus Management  
5940 W. Touhy Ave., Suite 350  
Niles, IL 60714  
Attn: Sherwin Ray

With a copy to: Sachnoff & Weaver  
30 South Wacker Drive  
29<sup>th</sup> Floor  
Chicago, Illinois 60606  
Attn: Abraham Stern

TO LENDER: Corus Bank, N.A.  
3959 North Lincoln Avenue  
Chicago, Illinois 60613  
Attention: John Ascher

With a copy to: Duane, Morris and Heckscher  
227 W. Monroe Street  
Suite 3400  
Chicago, IL 60606  
Attn: Daniel Kohn

TO CANADA LIFE: Mid-North Financial Services, Inc.  
205 W. Wacker Drive, Suite 202  
Chicago, IL 60606  
Attn: Howard Stern

With a copy to: Wildman, Harrold, Allen & Dixon  
225 W. Wacker Drive, Suite 3000  
Chicago, IL 60606  
Attn: Thomas Matyas, Esq.

12. **Interpretation.** Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of said document.

13. **Governing Law; Litigation.** THE VALIDITY OF THIS AGREEMENT, ITS CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT, AND THE RIGHTS OF SUBLESSEE, SUBLESSOR AND LENDER SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBLESSEE, SUBLESSOR AND LENDER HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE OR FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBLESSEE, SUBLESSOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT EITHER MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

14. **Jury Waiver.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBLESSEE, SUBLESSOR AND LENDER EACH HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF SUBLESSOR AND LENDER WITH RESPECT TO THIS AGREEMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBLESSEE, SUBLESSOR AND LENDER EACH HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT SUBLESSEE, SUBLESSOR OR LENDER MAY FILE A COPY OF THIS EXECUTED AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF SUBLESSEE, SUBLESSOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

15. **Miscellaneous.** This Agreement may not be amended or modified except by an agreement in writing signed by the party to be charged. If any action or proceeding is brought by any party against any other party arising from or related to this Agreement or the Lease, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, representatives, successors and assigns. Time is of the essence. This document represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, representations and covenants

[SIGNATURE PAGE FOLLOWS]

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

**SUBLESSOR:**

FAIRHAVEN OF CHICAGO RIDGE BUILDING, L.L.C., an Illinois limited liability company

By: [Signature]  
Its: [Signature]  
Duly Authorized

**SUBLESEE:**

SOUTHWEST SUBURBAN HEALTHCARE CENTER, L.L.C., a Delaware limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

**LENDERS:**

CORUS BANK, N.A.

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

**CANADA LIFE INSURANCE COMPANY OF AMERICA**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

Property of Cook County Clerk's Office

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

**SUBLESSOR:**

FAIRHAVEN OF CHICAGO RIDGE BUILDING, L.L.C., an Illinois limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

**SUBLESSEE:**

SOUTHWEST SUBURBAN HEALTHCARE CENTER, L.L.C., a Delaware limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

**LENDERS:**

CORUS BANK, N.A.

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

**CANADA LIFE INSURANCE COMPANY OF AMERICA**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
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Property of Cook County Clerk's Office

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By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

**SUBLESSEE:**

SOUTHWEST SUBURBAN HEALTHCARE CENTER, L.L.C., a Delaware limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

**LENDERS:**

CORUS BANK N.A.

By:  \_\_\_\_\_  
Its: ASST. VICE PRESIDENT  
Duly Authorized

**CANADA LIFE INSURANCE COMPANY OF AMERICA**

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

Property of Cook County Clerk's Office

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

**SUBLESSOR:**

FAIRHAVEN OF CHICAGO RIDGE BUILDING, L.L.C., an Illinois limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

**SUBLESEE:**

SOUTHWEST SUBURBAN HEALTHCARE CENTER, L.L.C., a Delaware limited liability company


By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

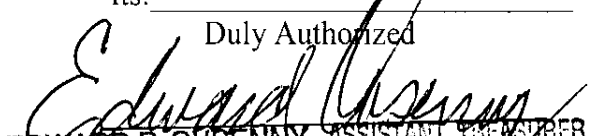
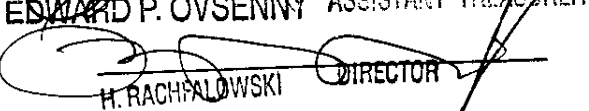
**LENDERS:**

CORUS BANK N.A.

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

**CANADA LIFE INSURANCE COMPANY OF AMERICA**

By:  \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

  
EDWARD P. OVSENNY ASSISTANT TREASURER  
  
H. RACHPALOWSKI DIRECTOR

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

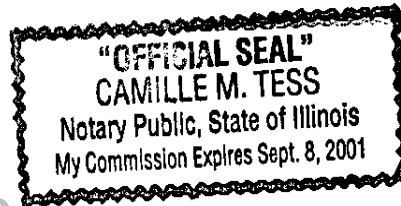
## SUBLESSOR'S ACKNOWLEDGMENT

STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

I, Camille M. Tess a Notary Public in and for said County in the State aforesaid, do hereby certify that Eric Rothner, the Manager of Fairhaven of Chicago Ridge Building, L.L.C., an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 25 day of January, 2000.

Camille M. Tess  
Notary Public



Property of Cook County Clerk's Office

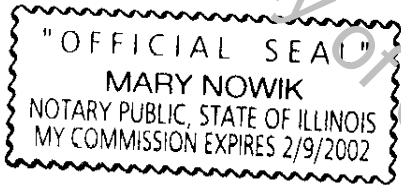
SUBLESSEE'S ACKNOWLEDGMENT

STATE OF ILLINOIS )

COUNTY OF COOK )

I, MARY NOWIK, a Notary Public in and for said County in the State aforesaid, do hereby certify that SHERWIN RAY, the MANAGER of Southwest Suburban Healthcare Center, L.L.C., a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own, free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 21st day of January, 2000.



Mary Nowik  
Notary Public

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## LENDER'S ACKNOWLEDGMENT

STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

I, \_\_\_\_\_, a Notary Public in and for said County in the State aforesaid, do hereby certify that John Ascher, the ASST. VICE PRESIDENT of the Corus Bank, N.A. (the "**Bank**"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such ASST. VICE PRESIDENT, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27 day of January, 2000.

Janice Lauffer  
\_\_\_\_\_  
Notary Public



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## LENDER'S ACKNOWLEDGMENT

STATE OF ILLINOIS )

COUNTY OF COOK )

I, Richard Thomas Mays, a Notary Public in and for said County in the State aforesaid, do hereby certify that EDWARD OVSENNY & H. RACHFALOWSKI the ASSISTANT TREASURER DIRECTOR of the Canada Life Insurance Company of America ("**Canada Life**"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such EDWARD OVSENNY & H. RACHFALOWSKI, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 24 day of January, 2000.

Richard Thomas Mays  
 Notary Public

Property of Cook County Clerk's Office

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

THAT PART OF THE EAST 1/7 OF THE WEST 18½ ACRES OF LOT 2 IN SUBDIVISION OF THE NORTH ½ OF SECTION 18, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN (ALSO KNOWN AS THE EAST 1/7 OF LOT 8 IN THE COUNTY CLERK'S DIVISION OF LOT 2 IN THE SUBDIVISION OF THE NORTH ½ OF SECTION 18, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN) LYING NORTHWESTERLY OF A LINE 50 FEET NORTHWESTERLY OF AND PARALLEL TO THE FOLLOWING DESCRIBED COURSE:

BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION 18, 379.65 FEET NORTH OF THE EAST AND WEST ¼ SECTION LINE OF SAID SECTION 18; THENCE NORTH 58 DEGREES 20 MINUTES EACH 545.88 FEET ALONG A LINE TO A POINT; THENCE NORTHEASTERLY 990.19 FEET ALONG A CURVE TANGENT TO THE LAST DESCRIBED COURSE, CONVEX TO THE SOUTHEAST WITH A RADIUS OF 6,740.70 FEET TO A POINT, SAID LINE BEING THE CENTER LINE OF THE 100 FOOT STRIP DEDICATED FOR USE AS THE "SOUTHWEST HIGHWAY" IN PLAT OF DEDICATION RECORDED MARCH 12, 1932 AS DOCUMENT NUMBER 11058752.

PARCEL 2:

THAT PART OF THE WEST 90.70 FEET OF THE EAST 178.08 FEET OF LOT 8 LYING NORTH OF THE CENTER LINE OF SOUTHWEST HIGHWAY IN COUNTY CLERK'S DIVISION OF LOT 2, BEING A SUBDIVISION OF THE NORTH ½ OF SECTION 18, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 10602 Southwest Highway, Chicago Ridge, Illinois 60414

PIN: 24-18-101-025  
24-18-101-039

**EXHIBIT B**

**RENT PROVISIONS**

**ARTICLE III**

**Rent**

Section 3.1 Base Rent. In consideration of the leasing aforesaid, Sublessee agrees to pay to Sublessor, without offset or deduction whatsoever except as specifically provided for in this Sublease, as rent hereunder, the Base Rent set forth in Exhibit D attached hereto and incorporated by reference, at the address of Sublessor hereafter set forth in Article XXVIII, or at such other place as Sublessor may direct in writing, and in addition thereto, shall pay such charges as are herein described as Additional Base Rent and/or additional rent. Base Rent shall be paid in equally monthly installments in advance on or before the first day of each month of the term of this Sublease. Until otherwise directed in writing by the Sublessor, Sublessee is hereby directed to make the payments of Base Rent and real estate tax deposits pursuant to Section 4.2 of this Agreement, directly to Prime Lessor.

Section 3.2 Additional Base Rent. Sublessee shall also pay to Sublessor as Additional Base Rent as and for the first year of the Term the sums set forth below at the address of Sublessor for payment of Base Rent. Additional Base Rent shall be payable in the sum of \$808,500.00 (\$3,500.00 per bed) Sublessee shall pay additional base rent as follows:

- (a) The sum of \$577,500.00 (\$2500.00 per bed) on the Sublease Commencement Date; and
- (b) The sum of \$249,480.00 (\$1,000.00 per bed plus interest at the rate of 8.00% per annum from the Sublease Commencement Date) on November 1, 2000; provided, however, that no such sum shall be paid unless the Facility has achieved a net profit of \$300,000.00 in the previous consecutive 12 month period.

Section 3.3 Security Deposit. Sublessee shall pay to Sublessor the sum of \$346,500.00 representing a Security Deposit to secure the obligations of Sublessee under this Sublease. The Security Deposit shall be paid as follows:

- (a) The sum of \$62,370.00 (\$250.00 per bed plus interest at the rate of 8.00% per annum from the Sublease Commencement Date) on November 1, 2000; provided, however, that no such sum shall be paid unless the Facility has achieved a net profit of \$300,000.00 in the previous consecutive 12 month period; and
- (b) The sum of \$336,798.00 (\$1250.00 per bed plus interest at the rate of 8.00% per annum from the Sublease Commencement Date) on November 1, 2001; provided, however, that no such sum shall be paid unless the Facility has achieved a net profit of \$300,000.00 in the previous consecutive 12 month period.

In the event of the termination of the Sublease for any reason other than termination arising from an Event of Default (as hereinafter defined) committed by Sublessee, the Security Deposit shall be refunded in full to Sublessee. The Security Deposit shall also be refunded to Sublessee upon the termination of the Sublease at the end of the Term, or upon the purchase of the Property by Sublessee, Sublessee's designee, an affiliate of Sublessee or someone purchasing through or at the direction of Sublessee, unless retained by Sublessor pursuant to Section 3.4.

Section 3.4 Sublessee's Failure to Pay Additional Base Rent. In the event that Sublessor does not receive the full amount of the Additional Base Rent from Sublessee when due, Sublessor shall only be obligated to return to Sublessee the portion of the Security Deposit equal to the amount of additional base rent actually received to Sublessee.

Section 3.5 Bonus Rent. Sublessee shall pay to Sublessor Bonus Rent in the amount of \$165,152.00 which shall be paid as follows:

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- (1) The sum of \$75,000.00, paid in cash, on the date of Closing; and
- (2) The sum of \$90,152.00, payable on the earlier of (i) the termination of the Sublease, or (ii) When and if I.D.P.A. and/or Medicare recoup amounts owed by Sublessor from payments due to Sublessee with respect to overpayments made to Sublessor pursuant to Section 19.7 of the Sublease, as a dollar for dollar set off.

Sublessee hereby acknowledges that I.D.P.A. will be recouping said amounts at the rate of \$18,030.40 per month during the months of January, 2000 through and including May, 2000.

Section 3.6 Additional Rent. The term "rent" when used in this Sublease shall include all amounts payable under this Article III as well as the charges herein described as additional rent. Any rent accruing under the provisions of this Lease which shall not be paid when due shall bear interest at the Lease Interest Rate, as hereinafter defined, from the date when the same is due hereunder until the same shall be paid.

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EXHIBIT B (continued)

RENT PROVISIONS

BASE RENT-CHICAGO RIDGE

<u>Period</u>	<u>Fixed Monthly Base Rent</u>	
November 1999 – February 2000	\$13.80/bed/day	(\$96,962.25)
March 2000 - February 2001	\$14.10/bed/day	(\$99,070.13)
March 2001 - February 2002	\$14.40/bed/day	(\$101,178.00)
March 2002 - February 2003	\$14.70/bed/day	(\$103,285.87)
March 2003 - February 2004	\$15.00/bed/day	(\$105,393.75)
March 2004 - February 2005	\$15.30/bed/day	(\$107,501.62)
March 2005 - February 2006	\$15.60/bed/day	(\$109,609.50)
March 2006 - February 2007	\$15.90/bed/day	(\$111,717.37)
March 2007 - February 2008	\$16.20/bed/day	(\$113,825.25)
March 2008 - February 2009	\$16.50/bed/day	(\$115,933.12)
March 2009 - February 2010	\$16.80/bed/day	(\$118,041.00)
March 2010 - February 2011	\$17.10/bed/day	(\$120,148.87)
March 2012 - February 2013	\$17.40/bed/day	(\$122,245.75)
March 2013 - February 2014	\$17.70/bed/day	(\$124,364.62)
March 2014 - February 2023	\$18.00/bed/day	(\$126,472.50)

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