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2002-07-22 08:38:24
Cook County Recorder 39.00

This instrument was prepared
by Stanford E. Gass, 29 So.
LaSalle Street, Suite 340
Chicago, Illinois 60603.



After recording return to:
Richard Levy, Shain, Burney,
Ross & Citron, Ltd.
222 North LaSalle Street,
Suite 1910, Chicago, IL
60601-1102

22054411/7788772, 6JC, D2

SUBORDINATION NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") made and entered into as of the 19th day of June, 2002 by and among 4720 North Racine, LLC., 4550 North Winchester, LLC and DWS Ownership, L.L.C., of the City of Chicago, Illinois, (collectively "Owner"), The Private Bank and Trust Company, of Chicago, Illinois, ("Lender"), and Advocate North Side Health Network, of Oak Brook, Illinois ("Tenant").

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RECITALS

A. Owner is the beneficiary of the Chicago Title Land Trust Company as trustee under a trust agreement, dated May 1, 2002, and known as 1110819 which owns the improved real property described in Exhibit A attached hereto (the "Premises"),

B. Lender is the owner and holder of that certain mortgage, dated June 14, 2002, given by the Chicago Title Land Trust Company as trustee under a trust agreement, dated May 1, 2002, and known as 1110819 and Owner to or for the benefit of Lender on the Premises, and a Collateral Assignment of Leases and Rents (together with all amendments, increases, renewals, modifications, consolidations, spreaders, replacements, combinations, supplements, substitutions and extensions thereof, now or hereafter made, are hereinafter collectively referred to as the "Mortgage," and which Mortgage, together with the mortgage note or notes, assignment and the loan agreement, and other documents executed in

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connection therewith and any amendments, increases, renewals, modifications, consolidations, spreaders, replacements, combinations, supplements, substitutions and extensions thereof, are hereinafter collectively referred to as the "Loan Documents");

C. Pursuant to ~~six~~^{EIGHT (8)} leases, each dated as of June 19, 2002 (collectively the "Leases"), Tenant has leased from Owner, as landlord, portions of the Premises (the "Leased Premises") more particularly described therein; and

D. Lender has agreed to recognize the status of Tenant in the event Lender acquires title to the Premises by foreclosure, by the acceptance of a deed in lieu thereof, or by any other means and Tenant has agreed to attorn to Lender in any such event.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing which are hereby incorporated, the mutual covenants hereinafter mentioned and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Tenant certifies that each Lease has been fully executed and is in full force and effect, and has not been modified or amended. Tenant further certifies that Tenant is not in default under any of the terms of the Leases and to Tenant's best knowledge, the Owner is not in default under any of the terms of the Leases.

2. The Mortgage and any renewals or extensions thereof, shall be and remain at all times a lien or charge on the Premises prior and superior to the Leases, the leasehold estates created thereby and to any options to lease or to purchase the Premises contained therein, and to all rights, privileges, and conditions therein contained. Tenant declares and acknowledges that it hereby intentionally waives, relinquishes, and subordinates the priority and superiority, if any, of the leasehold estates created by the Leases to the Mortgage. All amendments, modifications, substitutions, renewals, extensions and replacements of the Leases shall be and remain so subordinated as provided in this paragraph without the necessity of any further act of the parties. Tenant also declares and acknowledges that it understands that in reliance upon and in consideration of this waiver, relinquishment, and subordination, specific loans and advances secured by the Mortgage and Assignment will be made, and monetary and other obligations will be entered into by third parties which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

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3. If (a) Lender shall acquire title to, and possession of, the Premises through foreclosure, a deed-in-lieu of foreclosure or otherwise, and by operation of law or otherwise there is a resulting termination or cancellation of the Leases, and (b) Tenant is not in default under the Leases beyond any applicable cure or grace periods, has not canceled or terminated the Leases (without regard to whether Owner or Tenant is then in default under the Leases) nor surrendered, vacated or abandoned the Leased Premises, then, in such event, Lender shall enter into new leases with Tenant upon the same terms and conditions as were contained in the Leases, except that (x) the obligations and liabilities of Lender under any such new Leases shall be subject to the terms and conditions of this Agreement, and (y) the expiration date of such new Leases shall coincide with the original expiration date of the Leases. Tenant shall execute any such new Leases and shall attorn to Lender or its nominee, successors or assigns or any purchaser (as the case may be) as to establish direct privity between Lender and Tenant.

4. If (a) Lender shall acquire title to the Premises through foreclosure, a deed-in-lieu of foreclosure or otherwise and such acquisition of title does not result in a termination or cancellation of the Leases by operation of law or otherwise, and (b) Tenant is not in default under the Leases beyond any applicable cure or grace periods and Tenant has not surrendered, vacated or abandoned the Leased Premises at the time of such acquisition of title:

(i) Tenant shall be deemed to have made a full and complete attornment to Lender so as to establish direct privity between Lender and Tenant;

(ii) all obligations of Tenant under the Leases shall continue in full force and effect and be enforceable against Tenant by Lender, with the same force and effect as if the Leases had originally been made and entered into directly by and between Lender, as landlord thereunder, and Tenant; and

(iii) Lender shall recognize and accept the rights of Tenant under the Leases and, subject to the provisions of Paragraphs 5 and 6 hereof, shall thereafter assume the obligations of Owner under the Leases subject, in all events, to (A) the provisions of Paragraph 5 and 6 below and (B) Tenant's waiver, as against Lender, of any defaults of Owner (whether or not curable) which occurred prior to Lender acquiring title to, and possession of, the Premises.

5. (a) Nothing herein contained shall impose any obligation upon Lender to perform any of the obligations of Owner under the Leases, unless and until Lender shall take possession of the Premises, and, in any event, Lender shall have no liability with respect to

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any acts or omissions of Owner occurring prior to the date on which Lender shall take possession of the Premises.

(b) Notwithstanding anything to the contrary contained herein, officers, directors, shareholders, agents, servants and employees of Lender shall have no personal liability to Tenant and the liability of Lender, in any event, shall not exceed and shall be limited to Lender's interest in the Premises.

6. Tenant hereby agrees that notwithstanding anything to the contrary in this Agreement or the Leases:

(a) no amendment, modification, termination, assignment or sublease of the Leases shall be effective against Lender, unless consented to in writing by Lender;

(b) Lender shall not be bound by any advance payment of rent or additional rent to Owner (or its predecessors-in-interest) in excess of one month's prepayment thereof except as expressly approved in writing by Lender;

(c) Lender shall not be liable for any act or omission of Owner (or, its predecessor-in-interest);

(d) Lender shall not be subject to any offsets or defenses which Tenant might have against Owner;

(e) Lender shall not be bound by any covenant to undertake or complete any construction of the Premises, the Leased Premises or any portion thereof;

(f) Lender shall not be bound by any obligation of Owner to make any payment to Tenant, except that (i) Lender shall be liable for the timely return of any security or other deposit actually received by Lender and (ii) Lender shall be liable on account of any prepayments of rent or other charges owing to Tenant if the funds are actually received by Lender;

(g) Lender shall not be bound by any obligation to repair, replace, rebuild or restore the Premises, the Leased Premises, or any part thereof, in the event of damage by fire or other casualty, or in the event of partial condemnation, beyond such repair, replacement, rebuilding or restoration as can reasonably be accomplished with the use of the net insurance proceeds or the net condemnation award actually received by or made available to Lender; and

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(h) Lender shall not be required to remove any person occupying the Leased Premises or any part thereof.

7. Tenant hereby agrees to provide Lender with prompt notice of any asserted default by Owner of its obligations under the Leases. In the event any such asserted default constitutes a legal basis for the cancellation of the Leases by Tenant, Tenant hereby agrees that the Leases shall not be canceled or terminated until Lender shall have a reasonable period of time within which to (a) obtain possession of the Leased Premises, and (b) cure such default.

8. Tenant and Owner hereby agree that, in the event that Lender delivers to Tenant a notice (i) stating that a Default (as defined in the Mortgage and/or Loan Documents) has occurred under any of the Loan Document and (ii) requesting that all rent and additional rent due under the Leases be thereafter paid to Lender, Tenant shall pay, and is hereby authorized and directed by Owner to pay, such rent and additional rent directly to Lender. Delivery to Tenant of the afore described notice from Lender shall be conclusive evidence of the right of Lender to receive such rents and payment of the rents by Tenant to Lender pursuant to such notice shall constitute performance in full of Tenant's obligation under the Leases to pay such rents to Owner. Tenant agrees that Lender's demanding and/or receiving any such payments shall not operate to impose any liability upon Lender for performance of any obligation of Landlord under the Leases. Such payment of rents to Lender shall continue until Lender directs Tenant otherwise in writing, or until Tenant receives (i) a court order directing Tenant to pay rents to another person or entity, or (ii) notice that the Premises have been sold to a person or entity other than Lender. The provisions of this Paragraph 8 will terminate upon the earliest to occur of (a) termination of the Leases, (b) the recording of a release of the Mortgage, duly executed by Lender, or (c) Tenant's receipt of written notice to such effect from Mortgage.

9. Tenant agrees at any time and from time to time to execute, deliver and acknowledge to Owner, to Lender or to any third party designated by Owner or by Lender within ten (10) days after Owner's or Lender's written request therefore, (a) a statement in writing certifying that the Leases is in full force and effect, that Owner is not in default thereunder (or specifying any such defaults which Tenant alleges), that rent has not been prepaid more than one month in advance, and specifying any further information about the Leases or the Premises which Owner or Lender or said third party may reasonably request, and (b) a statement in writing acknowledging or denying receipt of notice of any conditional or security assignment of the Leases to any third party. Tenant understands that prospective purchasers, Mortgagees or lessors of the Premises or any part thereof will rely on such certificates. Tenant's obligation to deliver such certificates within 10 days as described above

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is a material obligation of Tenant hereunder and under the Leases.

10. Each of Owner and Tenant represents and warrants to Lender that, as of the date hereof, there are no agreements other than the Leases in existence or contemplated between Owner and Tenant, relating to the Premises or the Leased Premises or with respect to any other matter related to Tenant's occupancy of the Leased Premises.

11. Owner, by its execution of this Agreement, agrees to be bound by and to act in accordance with the terms and conditions herein above contained.

12. This Agreement (i) shall be governed by and construed in accordance with the laws of the state in which the Premises are located, (ii) contains the entire agreement among the parties with respect to the subject matter hereof and (iii) may not be modified, nor may any provision hereof be waived, orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors, administrators and assigns.

13. All notices or other communications hereunder to any party shall be (a) in writing and shall be deemed to have been duly given when received by personal delivery, three Business Days after the date when deposited in the United States mail, by registered or certified mail, postage prepaid, or one Business Day after delivery to an overnight courier service, and (b) addressed:

If to Owner:

4720 North Racine, LLC., and
4550 North Winchester, LLC
332 North Harvey Avenue
Oak Park, Illinois 60302
Attn: Mr. David Lehman

DWS Ownership, L.L.C.
1550 W. Carroll Street
Chicago, Illinois 60607
Attn: Mr. Alex Bernhardt

If to Lender:

The Private Bank and Trust Company
10 North Dearborn Street
Chicago, Illinois 60602

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With a Copy To:

Richard H. Levy, Esq.
Schain, Burney, Ross & Citron, Ltd.
222 North LaSalle Street, Suite 1910
Chicago, Illinois 60601

If to Tenant:

Attn: General Counsel
Advocate Health Network
2025 Windsor Drive
Oak Brook, Illinois 60523

With a Copy To:

Attn: Chief Executive
Advocate North Side Health Network
836 West Wellington
Chicago, Illinois 60657

or to any party at such other addresses as such party may designate in a written notice to the other party. "Business Day" shall mean any day, including Saturday, when Lender is open for business, other than Sunday or any other day on which federal savings banks in Chicago, Illinois are not open for business.

14. All rights of Lender hereunder shall accrue to, and all obligations of Lender shall be binding upon, Lender, its successors, assigns and nominees, including, without limitation, the grantee under a deed in lieu of foreclosure and/or the purchaser of the Premises at a foreclosure] sale or at any sale of the Premises following the granting of a deed in lieu of foreclosure or following foreclosure; provided, however, that following any sale or other transfer of its interest in the Premises, Lender, any such grantee or purchaser (as the case may be) shall be fully released and discharged of and from any and all obligations and liabilities of any kind hereunder or under the Leases and/or under any such new Leases. Without limiting the generality of the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors, administrators and permitted assigns of Owner and Tenant hereto.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above set forth.

4720 North Racine, LLC., and
4550 North Winchester, LLC.

By: 

DWS Ownership, LLC.

By: 

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David Lehman, their Manager

Alex Bernhardt, Manager

Tenant:

Advocate North Side Health Network

By: Paul M. Haskover
Its General Counsel, Chief Legal Officer

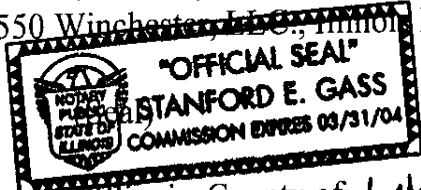
Lender:

The Private Bank and Trust Company

By: James Wagner
James Wagner, Its Associate Managing
Director

State of Illinois, County of Lake)SS

The foregoing instrument was signed and acknowledged before me this 19th day of June, 2002, by David Lehman, the manager of both 4720 North Racine, LLC. and 4550 Winchester, LLC., Illinois limited liability companies and on their behalf.



Stanford E. Gass
Notary Public

State of Illinois, County of Lake)SS

The foregoing instrument was signed and acknowledged before me this 19th day of June, 2002, by Alex Bernhardt, the manager of DWS Ownership, LLC., an Illinois limited liability company on its behalf.



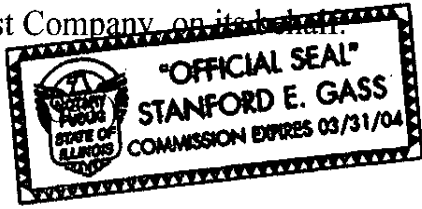
Stanford E. Gass
Notary Public

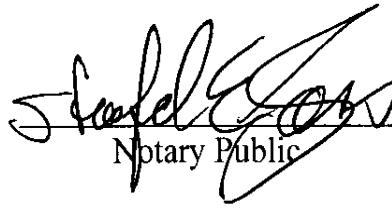
State of Illinois, County of Lake)SS

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The foregoing instrument was signed and acknowledged before me this 18th day of June, 2002, by James Wagner, Associate Managing Director, of The Private Bank and Trust Company, on its behalf.

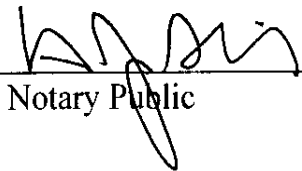



Notary Public

State of Illinois, County of _____)SS

The foregoing instrument was signed and acknowledged before me this ___ day of June, 2002, by Gail S. Parkhurst, its Secretary, of Advocate North Side Health Network, on its behalf.

(Seal)


Notary Public



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Exhibit A

LEGAL DESCRIPTION OF REAL PROPERTY

PARCEL 1: LOTS 1, 2, AND 3 OF SAMUEL BROWN JR.'S SUBDIVISION OF LOTS 13 AND 14 IN BLOCK 14 IN RAVENSWOOD, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 18, AND PART OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOTS 1 AND 2 IN FELIX J. CANDA'S RESUBDIVISION OF LOT 15 IN BLOCK 14, IN RAVENSWOOD, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 18, AND PART OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3: LOTS 16 THROUGH 24, BOTH INCLUSIVE, IN BLOCK 14 IN RAVENSWOOD BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 18, AND PART OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4: LOTS 1 THROUGH 10, BOTH INCLUSIVE, AND LOTS 13 THROUGH 24, BOTH INCLUSIVE, IN BLOCK 15 IN RAVENSWOOD BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 18, AND PART OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5: ALL THAT PART OF NORTH WINCHESTER AVENUE LYING WEST OF AND ADJOINING THE WEST LINE OF LOTS 17 TO 24, BOTH INCLUSIVE, IN BLOCK 14, LYING EAST OF AND ADJOINING THE EAST LINE OF LOTS 1 TO 8, BOTH INCLUSIVE, IN BLOCK 15, AND LYING NORTH OF AND ADJOINING A LINE DRAWN FROM THE SOUTHWEST CORNER OF SAID LOT 17 IN BLOCK 14 TO THE SOUTHEAST CORNER OF SAID LOT 8 IN BLOCK 15 ALL IN RAVENSWOOD AFORESAID, SAID PART OF PUBLIC STREET BEING FURTHER DESCRIBED AS ALL THAT PART OF NORTH WINCHESTER AVENUE LYING BETWEEN WEST WILSON AVENUE AND A LINE DRAWN 392 FEET, MORE OR LESS, SOUTH OF AND PARALLEL THERETO, IN COOK COUNTY, ILLINOIS.

PARCEL 6: THAT PART OF THE NORTH AND SOUTH VACATED ALLEY PER DOCUMENT 24015075, LYING WEST OF AND ADJOINING LOTS 1 TO 10 AND LYING EAST OF AND ADJOINING LOTS 15 TO 24, IN BLOCK 15 IN RAVENSWOOD AFORESAID AND LYING NORTH OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF LOT 10 TO THE SOUTHEAST CORNER OF LOT 15 AFORESAID, ALSO THAT PART OF THE WEST HALF OF THE NORTH AND SOUTH VACATED ALLEY PER DOCUMENT 24015075 LYING EAST OF THE ADJOINING LOTS 13 AND 14 IN BLOCK 15 IN RAVENSWOOD AFORESAID AND LYING SOUTH OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF LOT 10 TO THE SOUTHEAST CORNER OF LOT 15 AFORESAID, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 7: LOTS 11 AND 12 IN BLOCK 15 IN RAVENSWOOD BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 18, AND PART OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 8: THAT PART OF THE EAST 1/2 OF THE NORTH AND SOUTH VACATED ALLEY PER DOCUMENT 24015075, LYING WEST OF AND ADJOINING LOTS 11 TO 12 IN BLOCK 15 IN RAVENSWOOD AFORESAID AND LYING SOUTH OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF LOT 10 TO THE SOUTHEAST CORNER OF LOT 15 AFORESAID, ALL IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 4550 N. WINCHESTER AVENUE, CHICAGO, ILLINOIS

PERMANENT INDEX NUMBERS:

14-18-212-003 through -014 inclusive

14-18-212-024 and -026

14-18-213-001 through -007 inclusive

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