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Doc#. 1920315165 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 07/22/2019 01:22 PM Pg: 1 of 12

3/24/2019
THIS INSTRUMENT WAS PREPARED
BY AND AFTER RECORDING
SHOULD BE RETURNED TO:

Drew J. Scott, Esq.
Scott & Kraus, LLC
150 South Wacker Drive
Suite 2900
Chicago, Illinois 60606

Permanent Tax Index Numbers:

05-34-121-056-0000
05-34-121-041-0000
05-34-121-050-0000
05-34-121-051-0000
05-34-121-042-0000
05-34-121-048-0000

Property Address:

432 Poplar Drive
Wilmette, Illinois 60091

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of July 19, 2019, by and among (i) CIBC BANK USA, an Illinois banking corporation ("Lender"), having its principal place of business at 120 South LaSalle Street, Chicago, Illinois 60603, (ii) 432 POPLAR DRIVE, LLC, an Illinois limited liability company ("Landlord"), having its principal place of business at, 5611 Dempster Street, Morton Grove, Illinois 60053, and (iii) CITADEL CARE CENTER-WILMETTE, LLC, an Illinois limited liability company ("Tenant"), having its principal place of business 5611 Dempster Street, Morton Grove, Illinois 60053.

BACKGROUND

A. Landlord and Tenant have entered into that certain Lease Agreement (together with all amendments and modifications thereof, hereinafter being referred to as the "Lease") dated January 5, 2016 pursuant to which Tenant has leased certain premises (the "Leased Premises") of that certain tract of land which is improved with a skilled nursing home facility ("Building"), situated in the County of Cook, located at 432 Poplar Drive, Wilmette, Illinois 60091 (the "Land"; the Land and Building being collectively referred to herein as the "Real

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Estate) legally described on Exhibit "A" attached hereto and made a part hereof and commonly known as Citadel of Wilmette at 432 Poplar Drive, Wilmette, Illinois 60091.

B. Pursuant to that certain Loan Agreement of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement") by and among Landlord, Tenant, 7445 SHERIDAN ROAD, LLC, an Illinois limited liability company, 3701 W. 183RD STREET, LLC, an Illinois limited liability company, THE WATERFORD, LLC, an Illinois limited liability company ("Waterford Opco"), and CITADEL ESTATES-HAZEL CREST, LLC, an Illinois limited liability company ("Hazel Crest Opco") (each a "Borrower", and jointly and severally, "Borrowers"), and Lender, and the other Loan Documents (as defined in the Loan Agreement), Lender is providing loans in the amount of FIFTEEN MILLION ONE HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$15,160,000.00) (the "Landlord Loan") to Borrowers, and such loans are cross-collateralized and cross-defaulted with that certain revolving loan in the amount of TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,500,000.00) the "Tenant Loans", and collectively with the Landlord Loan, the "Loans"), pursuant to that certain Loan and Security Agreement dated as of even date herewith by among Tenant, Waterford Opco and Hazel Crest Opco (collectively, "Operators"), and Lender, as amended, restated, supplemented or otherwise modified from time to time. Any capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

Lender is the mortgagee under the Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as the date hereof, to be recorded concurrently herewith (the "Mortgage"), which Mortgage encumbers the Real Estate and secures the Loans.

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

1. Tenant represents and warrants to Lender that the Lease constitutes the entire agreement between Tenant and Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of Tenant with respect to the Leased Premises.

2. Tenant has executed and delivered to Lender that certain Tenant Estoppel Certificate dated on or about the date hereof (the "Estoppel Certificate"). The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in this Agreement in their entirety, and Tenant acknowledges that Lender will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.

3. Tenant covenants with Lender that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to

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insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to Lender's right, title and interest in and to such proceeds and awards.

4. Tenant acknowledges that Landlord has collaterally assigned to Lender any and all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, Tenant agrees that, upon receipt of a notice of a default by Landlord under such assignment and a demand by Lender for direct payment to Lender of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Lender. Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to Landlord and Lender.

5. Lender agrees that so long as Tenant is not in default under the Lease:

(a) Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless Tenant is a necessary party under applicable law); and

(b) The possession by Tenant of the Leased Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage.

6. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure being hereinafter referred to as a "Landlord's Default"), Tenant shall: (a) provide Lender with a notice of the Landlord's Default, specifying the nature thereof, the section of the Lease under which such Landlord's Default arose, and the remedy which Tenant will elect under the terms of the Lease or otherwise, and (b) allow Lender not less than thirty (30) days following receipt of notice of the Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, Tenant shall give Lender an additional thirty (30) day period to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as Lender is diligently pursuing a cure and the pursuit of such cure does not materially interfere with Tenant's occupancy and use of the Real Estate. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Lender fails to cure same within the time period specified above. For purposes of this Section, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without Landlord having effectuated a cure thereof.

7. If Lender or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be

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sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subsection (b) below), and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term), and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Lender exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord);

(ii) subject to any offset or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Lender with (A) notice of the Landlord's Default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of Section 6 above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);

(iv) liable to refund or otherwise account to Tenant for any security deposit not actually paid over to such new owner by Landlord;

(v) bound by any amendment or modification of the Lease made without Lender's consent;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord); or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

8. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or

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certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Lender: CIBC Bank USA
120 South LaSalle Street
Chicago, Illinois 60603
Attention: Sam Dendrinis

With a copy to: Scott & Kraus, LLC
150 South Wacker Drive, Suite 2900
Chicago, Illinois 60606
Attention: Drew J. Scott, Esq.

To Landlord: 432 Poplar Drive, LLC
5611 Dempster Street
Morton Grove, Illinois 60053
Attention: Jonathan Aaron

With a copy to: Marilyn Dunn, Esq.
55 West Monroe Street, Suite 2400
Chicago, Illinois 60603

To Tenant: Citadel Care Center-Wilmette, LLC
5611 Dempster Street
Morton Grove, Illinois 60053
Attention: Jonathan Aaron

With a copy to: Marilyn Dunn, Esq.
55 West Monroe Street, Suite 2400
Chicago, Illinois 60603

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

9. Tenant acknowledges and agrees that Lender will be relying on the representations, warranties, covenants and agreements of Tenant contained herein and that any default by Tenant hereunder shall permit Lender, at its option, to exercise any and all of its rights and remedies at law and in equity against Tenant and to join Tenant in a foreclosure action thereby terminating Tenant's right, title and interest in and to the Leased Premises.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Lender, all of whom are

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entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

12. Lender is hereby authorized to rely upon and accept as an original this Agreement, any Loan Documents or other communication which is sent to Lender by facsimile, telegraphic or other electronic transmission (each, a "Communication") which Lender in good faith believes has been signed by Tenant and Landlord and has been delivered to Lender by a properly authorized representative of Tenant and Landlord, whether or not that is in fact the case. Notwithstanding the foregoing, Lender shall not be obligated to accept any such Communication as an original and may in any instance require that an original document be submitted to Lender in lieu of, or in addition to, any such Communication.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

LENDER:

CIBC BANK USA, an Illinois banking corporation

By: _____
Sam Dendrin, Managing Director

LANDLORD:

432 POPLAR DRIVE, LLC, an Illinois limited liability company

By: _____
Jonathan Aaron, Manager

TENANT:

CITADEL CARE CENTER-WILMETTE, LLC, an Illinois limited liability company

By: _____
Jonathan Aaron, Manager

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IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

LENDER:

CIBC BANK USA, an Illinois banking corporation

By: _____
Sam Dendrinis, Managing Director

LANDLORD:

432 POPLAR DRIVE, LLC, an Illinois limited liability company

By: _____
Jonathan Aaron, Manager

TENANT:

CITADEL CARE CENTER-WILMETTE, LLC, an Illinois limited liability company

By: _____
Jonathan Aaron, Manager

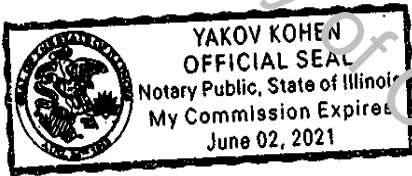
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STATE OF ILLINOIS)
)
COUNTY OF Cook) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jonathan Aaron, personally known to me to be the Manager of CITADEL CARE CENTER-WILMETTE, LLC, an Illinois limited liability company, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such Manager of such company, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth and pursuant to such company's authority.

GIVEN under my hand and Notarial Seal, this July 1, 2019.



YK

Notary Public

My commission expires: 6/2/21

STATE OF ILLINOIS)
)
COUNTY OF Cook) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jonathan Aaron, personally known to me to be a Manager of 432 POPLAR DRIVE, LLC, an Illinois limited liability company, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such Manager of such company, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth and pursuant to such company's authority.

GIVEN under my hand and Notarial Seal, this July 1, 2019.



YK

Notary Public

My commission expires: 6/2/21

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STATE OF ILLINOIS)
)
COUNTY OF COOK)

SS

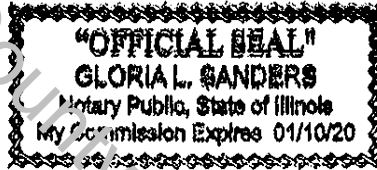
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Sam Dendrinis, Managing Director, personally known to me to be a Managing Director of CIBC BANK USA, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that as such officer he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth and pursuant to such bank's authority.

GIVEN under my hand and Notarial Seal, this July 8, 2019.

Gloria L. Sanders

Notary Public

My commission expires: 1/10/20



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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOT 5 (EXCEPT THE NORTH 16 FEET) AND LOT 6 IN THE SUBDIVISION OF SWARTOUT'S RESUBDIVISION OF LOTS 4 AND 5 IN BLOCK 11 IN WILMETTE VILLAGE IN SECTION 34, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 5 IN OWNER'S SUBDIVISION OF LOT 6 IN BLOCK 11 IN WILMETTE VILLAGE, IN SECTION 34, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 1 IN DOIG'S RESUBDIVISION OF LOTS 7 AND 8 IN BLOCK 11 IN WILMETTE VILLAGE IN SECTION 34, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

LOT 2 IN MCNAMEE'S RESUBDIVISION OF PART OF LOTS 5, 6, 7 IN DOIG'S RESUBDIVISION OF LOTS 7 AND 8 IN BLOCK 11 IN VILLAGE OF WILMETTE, A SUBDIVISION OF THE WEST 63.55 CHAINS OF THE NORTH SECTION OF OUILMETTE RESERVATION, ALSO THE 40 FEET NORTH OF AND ADJOINING THE CENTER LINE OF NORTH AVENUE AND THE 33 FEET SOUTH OF AND ADJOINING THE CENTER LINE OF SOUTH AVENUE, IN SECTION 34, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5:

LOT 1 IN MCNAMEE'S RESUBDIVISION OF PART OF LOTS 5, 6, 7 IN DOIG'S RESUBDIVISION OF LOTS 7 AND 8 IN BLOCK 11 IN VILLAGE OF WILMETTE, A SUBDIVISION OF THE WEST 63.55 CHAINS OF THE NORTH SECTION OF OUILMETTE RESERVATION, ALSO THE 40 FEET NORTH OF AND ADJOINING THE CENTER LINE OF NORTH AVENUE AND THE 33 FEET SOUTH OF AND ADJOINING THE CENTER LINE OF SOUTH AVENUE, IN SECTION 34, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 6:

LOTS 2, 3, 4 AND THE NORTHWESTERLY 6 FEET OF LOT 5 IN DOIG'S RESUBDIVISION OF LOTS 7 AND 8 IN BLOCK 11 IN WILMETTE VILLAGE IN

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SECTION 34, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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