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EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 09/06/2019 10:12 AM PG: 1 OF 9

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This Document Prepared by  
and after Recording Return to:

Seyfarth Shaw LLP  
560 Mission Street, Suite 3100  
San Francisco, CA 94105  
Attn: Robin S. Freeman

Tax#: 03-10-401-021-0000

## SUBORDINATION AND ATTORNMENT AGREEMENT

THIS SUBORDINATION AND ATTORNMENT AGREEMENT (this "Agreement") is dated September 1, 2019, by and among **WHEELING SKILLED NURSING FACILITY, LLC**, an Illinois limited liability company ("Operator"), **WHEELING PROPERTY HOLDINGS, LLC**, an Illinois limited liability company ("Landlord"), and **CONGRESSIONAL BANK**, a Maryland chartered commercial bank, as administrative agent (its successors and assigns, the "Administrative Agent").

### RECITALS

Administrative Agent is the holder of a certain Mortgage, Security Agreement and Fixture Filing dated of even date herewith, for its benefit and for the benefit of Lender (as defined therein), and to be recorded concurrently herewith (as amended from time to time, the "Mortgage") encumbering the Real Estate (hereinafter defined), the Mortgage securing the Loan, as defined therein.

Tenant has entered into a Lease Agreement with Landlord dated as of the date hereof (as amended from time to time, the "Lease"), pursuant to which Tenant leases from Landlord certain premises (the "Leased Premises") consisting of a 215-bed skilled nursing home commonly known as "Lexington of Wheeling" operated by Tenant (the "Facility") on the parcel of land (the "Land", with the Facility collectively referred to herein as the "Real Estate") legally described in Exhibit A attached hereto.

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

1. Tenant represents and warrants to Administrative Agent that the Lease between Landlord and Tenant dated as of the date hereof constitutes the entire agreement between Tenant

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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 Administrative Agent a certain Tenant Estoppel Certificate (the "**Estoppel Certificate**") dated on or about the date hereof. 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 Administrative Agent 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. 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 hereinafter referred to as a "**Landlord's Default**"), Tenant shall: (a) provide Administrative Agent with a notice of Landlord's Default specifying the nature thereof, the section of the Lease under which same arose and the remedy which Tenant will elect under the terms of the Lease or otherwise, and (b) allow Administrative Agent not less than sixty (60) days following receipt of such notice of Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such sixty (60) day period, Tenant shall give Administrative Agent such additional time as Administrative Agent may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as Administrative Agent is diligently pursuing a cure. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Administrative Agent fails to cure same within the time period specified above. For purposes of this Paragraph 3, 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.

4. Tenant covenants with Administrative Agent 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 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 Administrative Agent's right, title and interest in and to such proceeds and awards.

5. Tenant acknowledges that Landlord has collaterally assigned to Administrative Agent all leases affecting the Real Estate, including the Lease, Landlord's lien on all assets of Tenant, the security deposit, 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 Administrative Agent for direct payment to Administrative Agent of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent and other payments required under the Lease directly to Administrative Agent. Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to Landlord and Administrative Agent. Landlord

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hereby assigns any such payment to Administrative Agent and further covenants and agrees that upon the request of Administrative Agent, it will duly endorse to the order of Administrative Agent any such check, the proceeds of which shall be applied in accordance with the terms of the Loan Agreement by and between Landlord and Administrative Agent of even date herewith.

6. If Administrative Agent or any future holder of the Mortgage shall (a) enter upon and take possession of the Leased Premises pursuant to the Mortgage or (b) become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, then, subject to the sole discretion of Lender, such future holder of the Mortgage, or such new owner of the Real Estate, the Lease may 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 the terms, covenants and provisions contained in the Lease. In such event:

(a) Tenant, at such new owner's option, 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 Administrative Agent 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 not be:

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

(ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord);

(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 Administrative Agent'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

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(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.

Nothing herein shall obligation Lender or any future holder of the Mortgage to continue the Lease in the event Lender or such future holder of the Mortgage (a) enters upon and takes possession of the Leased Premises pursuant to the Mortgage or (b) becomes the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, and the parties hereto hereby acknowledge and agree that upon any such foreclosure, Lender or any future holder of the Mortgage shall have the right to terminate the Lease, effective immediately upon notice by Lender or such future holder of the Mortgage.

7. 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 certified mail, return receipt requested, (iii) by overnight express carrier, or (iv) by facsimile or email transmission, addressed in each case as follows:

To Administrative Agent: Congressional Bank  
5515 Security Lane, Suite 740  
North Bethesda, MD 20852  
Attention: Amy Heller  
Facsimile: 244-380-1347  
Email: AHeller@cb-hhcf.com

With a copy to: Seyfarth Shaw LLP  
560 Mission Street, Suite 3100  
San Francisco, California 94123  
Attention: Robin S. Freeman  
Phone: (415) 544-1051  
Fax: (415) 397-8549

To Tenant/Landlord: Daniel S. Garden  
General Counsel  
Cascade Capital Group, LLC  
3450 Oakton Street  
Skokie, IL 60076  
Tel: (847) 676-5331  
Fax: (847) 679-1126

With a copy to: Stacy J. Flanigan  
Gutnicki LLP  
4711 Golf Road, Suite 200  
Skokie, IL 60076  
Tel: (847) 745-6936

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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 paragraph 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, (iii) if sent by registered or certified mail, then on the earlier of the first (1st) federal banking day following the day sent or when actually received, or (iv) if sent by facsimile or email, as evidenced by receipt of a successful transmission report (followed by delivery by one of the other means identified in (i)-(iii)).

8. Tenant acknowledges and agrees that Administrative Agent will be relying on the representations, warranties, covenants and agreements of Tenant contained herein and that any default by Tenant hereunder shall permit Administrative Agent, 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 any foreclosure action thereby terminating Tenant's right, title and interest in and to the Leased Premises.

9. 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 Administrative Agent, all of whom are entitled to rely upon the provisions hereof.

10. If any provision of this Agreement is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the parties hereto shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Agreement and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

11. This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, without reference to the choice of law or conflicts of law principles of the State of Maryland.

**12. THE PARTIES HERETO, HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS AGREEMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

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

[Signature Page Follows]

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

TENANT:

**WHEELING SKILLED NURSING FACILITY, LLC,**  
an Illinois limited liability company

By: Legacy Healthcare Financial Services, LLC  
Its: Manager

By: [Signature]  
Menachem Shabat, Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF IL

COUNTY OF Cook

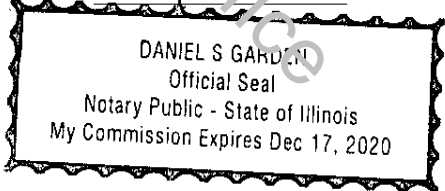
On Aug 27 before me, Daniel Garden Notary Public,  
(here insert name and title of the officer)

personally appeared Chaim Reichenbach  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature]

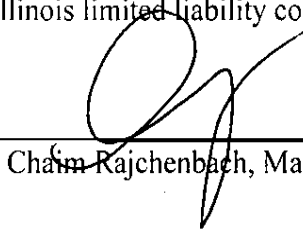


(Seal)

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**LANDLORD:**

**WHEELING PROPERTY HOLDINGS, LLC,**  
an Illinois limited liability company

By:   
Sam Rajchenbach, Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF Illinois }

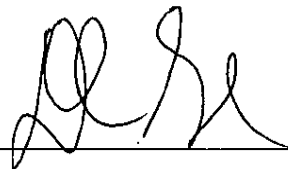
COUNTY OF Cook }

On Aug 27 before me, Daniel Garden Notary Public,  
(here insert name and title of the officer)

personally appeared Sam Rajchenbach  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 



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ADMINISTRATIVE AGENT:

CONGRESSIONAL BANK,  
a Maryland chartered commercial bank

By: *Amy Heller*  
Amy Heller, Authorized Signatory

STATE OF Maryland :

:SS

CITY/COUNTY OF Rockville / Montgomery

On this day August 26, 2019, before me, the undersigned Notary Public of said State, personally appeared Amy Heller who acknowledged herself to be the Authorized Signatory (title) of Congressional Bank, a Maryland chartered commercial bank, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized signatory of said chartered commercial bank by signing the name of the chartered commercial bank by herself as Authorized Signatory (title).

WITNESS my hand and Notarial Seal.

*Susan M. Edwards*  
Notary Public

My Commission Expires:





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## EXHIBIT A

### LEGAL DESCRIPTION

LOT 1 IN LEXINGTON HEALTH CARE OF WHEELING PLAT OF SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 10, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 730 West Hintz, Wheeling, IL 60090

Tax#: 03-10-401-027-0000

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