

UNOFFICIAL COPY

FIRST AMERICAN TITLE
FILE # 37376 494

Doc#: 2407120261 Fee: \$107.00
KAREN A. YARBROUGH
COOK COUNTY CLERK'S OFFICE
Date 3/11/2024 2:23 PM Pg: 1 of 17

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

SUBORDINATION AGREEMENT

This SUBORDINATION AGREEMENT is entered into as of February 22, 2024 (the "Subordination Agreement") by and among OAKTON ARMS LIMITED PARTNERSHIP, an Illinois limited partnership ("Arms"), OAKTON TERRACE NURSING HOME, an Illinois limited partnership, beneficiary of CHICAGO TITLE LAND TRUST COMPANY, an Illinois corporation, not personally, but solely as Successor Trustee under a Trust Agreement dated July 10, 1975, as amended, and known as Trust No. 10-30192-09 ("Terrace", and together with Arms, the "Junior Lender"), CIBC BANK USA, an Illinois banking corporation ("Senior Lender"), whose address is 120 South LaSalle Street, Chicago, Illinois 60603, and GENERATIONS HEALTH CARE PROPERTY OF DES PLAINES, LLC, an Illinois limited liability company ("Borrower"), whose address is 6840 North Lincoln Avenue, Lincolnwood, Illinois 60712.

RECITALS:

A. Borrower is currently indebted to Junior Lender in the principal amount of One Million One Hundred Five Thousand and No/100 Dollars (\$1,105,000.00) (the "Junior Loan"), as evidenced by that certain Amended and Restated Promissory Note dated as of January 1, 2024 (the "Junior Note") made by Borrower in favor of Junior Lender.

B. The Junior Loan is secured by that certain Junior Mortgage and Security Agreement dated as of September 2, 2014 and recorded with the Cook County Recorder of Deeds on September 4, 2014 as Document No. 1424729078 (the "Junior Mortgage"), made by Borrower in favor of Junior Lender.

C. The Junior Loan is guaranteed by Bryan Barrish, an individual ("Barrish"), Michael Giannini, an individual ("Giannini"), and Ralph Gesauldo, an individual ("Gesauldo"), and collectively with Barrish and Giannini, the "Junior Loan Guarantors", pursuant to that certain

UNOFFICIAL COPY

Guaranty of Note dated as of September 2, 2014 (the "Junior Loan Guaranty") made by Junior Loan Guarantors in favor of Junior Lender.

D. Borrower is party to that certain Loan Agreement dated as of even date herewith (the "Senior Loan Agreement") by and between Borrower and Senior Lender, as well as certain other loan documents executed in connection therewith (the "Senior Loan Documents").

E. Junior Lender desires that Senior Lender extend credit to Borrower pursuant to the Senior Loan Agreement, and Senior Lender has refused to consider the extension of such credit until the "Junior Debt" (as defined below) is subordinated to the "Senior Debt" (as defined below) in the manner hereinafter set forth.

F. The extension of credit, as aforesaid, by Senior Lender is necessary or desirable to the conduct and operation of the business of Borrower, and will inure to the benefit of Junior Lender.

NOW, THEREFORE, in consideration of the extension of credit by Senior Lender to Borrower, as Senior Lender may, in its sole discretion, determine, and for other good and valuable consideration to Junior Lender, the receipt and sufficiency of which are hereby acknowledged, Junior Lender and Borrower hereby agree with Senior Lender as follows:

AGREEMENTS:

1. Subordination.

1.1 Junior Lender hereby subordinates the indebtedness of the Junior Loan, and any and all other indebtedness now or at any time or times hereafter owing by Borrower, or any successor or assign of Borrower, including without limitation, a receiver, trustee or debtor-in-possession (the term "Borrower" as used hereinafter shall include any such successor or assign of Borrower) to Junior Lender, whether such indebtedness is absolute or contingent, direct or indirect and howsoever evidenced, including without limitation, all interest thereon, including pre-petition and post-petition interest, fees and expenses and any other charges, and any refinancings thereof (collectively, the "Junior Debt") to any and all indebtedness now or at any time hereafter owing by Borrower to Senior Lender, whether absolute or contingent, direct or indirect and howsoever evidenced, including, but not limited to, all pre-petition and post-petition interest thereon, fees, expenses and all other demands, claims, liabilities or causes of action for which Borrower may now or at any time or times hereafter in any way be liable to Senior Lender, whether under any agreement, instrument or document executed and delivered or made by Borrower to Senior Lender or otherwise, including any refinancings thereof, including but not limited to the Senior Loan Agreement and Senior Loan Documents (collectively, the "Senior Debt").

1.2 Other than the Junior Mortgage and the Junior Loan Guaranty, there are no security interests, liens, rights of setoff or recoupment, encumbrances and claims, whether now existing or hereafter arising which in any way secure the payment of the Junior Debt, and the Junior Debt shall not be secured by any security interests, liens, encumbrances and claims (other than the Junior Mortgage and Junior Loan Guaranty) during the term of this Subordination

UNOFFICIAL COPY

Agreement. The Junior Mortgage, the Junior Loan Guaranty and any lien, encumbrance or claim hereafter arising by operation of law or otherwise in any way securing the Junior Debt (the "Junior Lender's Collateral"), shall be subordinate to the liens, encumbrances and claims, whether now existing or hereafter arising, which in any way secure the payment of the Senior Debt (the "Senior Lender's Collateral").

1.3 Until all of the Senior Debt has been finally paid in full: (a) the Junior Lender shall not demand, accept or acquire from the Borrower or any other obligor on the Senior Loan any collateral of any kind; (b) the Borrower shall not discharge the Junior Debt other than in accordance with the terms of this Subordination Agreement; (c) the Junior Lender shall not demand or accept from the Borrower, any obligor on the Senior Debt or other person or entity any consideration which would result in a discharge of the Junior Debt other than in accordance with the terms of this Subordination Agreement; (d) the Junior Lender shall not hereafter give any subordination in respect of the Junior Debt; (e) the Borrower shall not hereafter issue any instrument, security or other writing evidencing any part of the Junior Debt, and the Junior Lender shall not receive any such writing; (f) the Borrower hereby agrees that it shall not make (and will not permit any other obligor on the Senior Debt to make), and Junior Lender hereby agrees that it will not accept, any cash payment of interest or other payments or distributions with respect to the Junior Debt (except as expressly permitted by Section 1.5 hereof), including any payment or distribution received through the exercise of any right of setoff or recoupment, counterclaim or crossclaim; (g) the Junior Lender may not modify any of the terms and conditions of the Junior Debt, including without limitation increase the principal amount and/or the interest rate of the Junior Debt without the prior written consent of Senior Lender; and (h) Junior Lender may not accelerate the maturity of the Junior Debt or commence any action or proceeding against Borrower to recover all or any part of the Junior Debt, or join with any creditor (unless Senior Lender shall so join) in bringing any proceeding against Borrower under any bankruptcy, reorganization, readjustment of debt, arrangement of debt receivership, liquidation or insolvency law or statute of the federal or any state government or exercise or enforce any right or remedy available to Junior Lender.

1.4 Junior Lender agrees that it shall not have any right to possession of any assets included in Junior Lender's Collateral or in Senior Lender's Collateral, whether by judicial action or otherwise.

1.5 Junior Lender agrees to instruct Borrower not to pay, and agrees not to accept payment of, or assert, demand, exercise any right of setoff, recoupment or other similar remedy, sue for or seek to enforce against Borrower or any other person or entity, by setoff, recoupment or otherwise, all or any portion of the Junior Debt until the Senior Loan has been finally repaid in full. Junior Lender hereby irrevocably agrees to waive and release any statutory, common law or consensual right to exercise setoff, recoupment or other similar rights so long as the Senior Debt has not been finally paid in full. Interest on the Junior Debt shall not exceed nine percent (9%) per annum. Notwithstanding the foregoing, Borrower may pay, and Junior Lender may accept, regularly scheduled payments of principal and interest on the Junior Debt, at the times and in the amounts described in the Junior Note, but only if no default or event of default, however, described or defined, exists under any of the Senior Loan Documents, or would result from any such payment. For purposes of clarity and avoidance of doubt, if any payment of principal and/or

UNOFFICIAL COPY

interest on the Junior Debt shall cause Borrower to be out of compliance with Section 7.14 (Operator Fixed Charge Coverage Ratio) or Section 7.15 (Debt Service Coverage Ratio) of the Senior Loan Agreement, Borrower shall not be permitted to pay, and Junior Lender shall not be permitted to accept, any such payment of principal and/or interest notwithstanding that Borrower may have subsequently cured such failure to comply pursuant to Section 7.36 (Cure of Cash Flow Covenant Failure) of the Senior Loan Agreement.

1.6 Junior Lender hereby assigns to Senior Lender and subrogates to Senior Lender all of Junior Lender's right, title and interest in and to the Junior Debt and Junior Lender's Collateral, and hereby irrevocably authorizes Senior Lender (i) to collect, receive, enforce and accept any and all sums or distributions of any kind, whether cash, securities or other property, that may become due, payable or distributable on or in respect of the Junior Debt or Junior Lender's Collateral, whether paid directly by Borrower or paid or distributed in any liquidation, bankruptcy, arrangement, receivership, assignment, reorganization or dissolution proceedings or otherwise, and (ii) in Senior Lender's sole discretion, to make, present and vote claims therefor in, and take such other actions as Senior Lender deems necessary or advisable in connection with, any such proceedings, in either Senior Lender's name or in the name of Junior Lender, including, but not limited to, any election in any proceeding instituted under Chapter 11 of Title 11 of United States Code (11 U.S.C. § 101 et. seq.) (the "Bankruptcy Code"); and agrees that upon the written request of Senior Lender it will promptly assign, endorse and deliver to and deposit with Senior Lender all agreements, instruments and documents evidencing the Junior Debt, as necessary.

1.7 Junior Lender hereby agrees to amend the Junior Note and the Junior Mortgage (and all other agreements, instruments and documents evidencing the Junior Debt, if any) with proper notice of this Subordination Agreement as follows:

"This loan is subordinated to all indebtedness now or hereafter owing by the maker to CIBC BANK USA, as provided in that certain Subordination Agreement dated as of February 22, 2024 (the "Subordination Agreement"), as modified, amended, restated or replaced from time to time, and to all indebtedness refinancing such indebtedness, and each holder of this instrument, by its acceptance hereof, agrees to be bound by the provisions of the Subordination Agreement. This instrument may not be amended, restated or otherwise modified without the prior written consent of CIBC BANK USA."

Junior Lender will promptly deliver to Senior Lender certified copies of all other agreements, instruments and documents hereafter evidencing the Junior Debt, in each case showing such endorsement.

1.8 Junior Lender agrees to receive and hold in trust for and promptly turn over to Senior Lender, in the form received (except for the endorsement or assignment by Junior Lender where necessary), any sums at any time paid to, or received by, Junior Lender in violation of the terms of this Subordination Agreement and to reimburse Senior Lender for all costs, including reasonable attorney's fees, incurred by Senior Lender in the course of collecting said sums should Junior Lender fail to voluntarily turn the same over to Senior Lender as herein required.

UNOFFICIAL COPY

1.9 Junior Lender hereby irrevocably makes, constitutes and appoints Senior Lender (and any officer of Senior Lender or any person designated by Senior Lender for that purpose) as that Junior Lender's true and lawful proxy and attorney-in-fact (and agent-in-fact) in that Junior Lender's name, place and stead, with full power of substitution, to (i) take any and all actions as are permitted in this Subordination Agreement, (ii) file such financing statements and other documents and to do such other acts as Senior Lender may require to perfect and preserve the Senior Debt and Senior Lender's Collateral, and (iii) carry out any remedy provided for in this Subordination Agreement. Junior Lender hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable. Junior Lender hereby ratifies and confirms all that said attorney-in-fact may do or cause to be done by virtue of any provision of this Subordination Agreement.

1.10 Junior Lender agrees (i) that it shall not modify or amend any note, oral agreement, accounting book entry, agreement, instrument or document evidencing the Junior Debt or add any security for the Junior Debt (including, without limitation, the Junior Note, the Junior Loan Guaranty and the Junior Mortgage) without the prior written consent of Senior Lender, and (ii) that it will notify Senior Lender any time a payment under the Junior Debt is deferred under the terms of the Junior Debt or of any default under the Junior Debt.

2. Representations.

2.1 Junior Lender represents and warrants to Senior Lender that Junior Lender has not assigned or otherwise transferred the Junior Debt or Junior Lender's Collateral, or any interest therein to any person or entity, and agrees that Junior Lender will not make any assignment or other transfer thereof.

2.2 Junior Lender represents and warrants to Senior Lender that no default or of any event which, with the lapse of time, the giving of notice or both, would constitute a default under the Junior Debt or any instrument evidencing or securing the Junior Debt, has occurred and is continuing (a "Junior Debt Default"), and Junior Lender further agrees to promptly provide Senior Lender with written notice of any Junior Debt Default.

2.3 Junior Lender represents and warrants to Senior Lender that the outstanding amount of the Junior Debt as of the date of this Subordination Agreement is One Million One Hundred Five Thousand and No/100 Dollars (\$1,105,000.00).

3. Further Agreements.

3.1 If (i) a Junior Debt Default has occurred and is continuing, (ii) either Borrower or Senior Lender intends to sell or otherwise dispose of any of Senior Lender's Collateral to an unrelated third party outside the ordinary course of business, (iii) Senior Lender has given written notice thereof to Junior Lender, and (iv) Junior Lender has failed, within ten (10) days after receipt of such notice, to purchase for cash Senior Debt for the full amount thereof, Junior Lender shall be deemed to have consented to such sale or disposition, to have released any lien it may have in such of Senior Lender's Collateral and to have authorized Senior Lender to file releases with respect to such of Senior Lender's Collateral (if any).

UNOFFICIAL COPY

3.2 Junior Lender expressly waives all notice of the acceptance by Senior Lender of the subordination and other provisions of this Subordination Agreement and all notices not specifically required pursuant to the terms of this Subordination Agreement, and Junior Lender expressly waives reliance by Senior Lender upon the subordination and other provisions of this Subordination Agreement as herein provided.

3.3 Junior Lender consents and agrees that all Senior Debt shall be deemed to have been made, incurred and/or continued in reliance upon this Subordination Agreement.

3.4 Junior Lender agrees that Senior Lender has made no warranties or representations with respect to the due execution, legality, validity, completeness or enforceability of the documents, instruments and agreements evidencing the Senior Debt, that Senior Lender shall be entitled to manage and supervise its financial arrangements with Borrower in accordance with its usual practices, without impairing or affecting this Subordination Agreement.

3.5 Junior Lender agrees that Senior Lender shall have no liability to Junior Lender, and in particular, Junior Lender hereby waives any claim which it may now or hereafter have against Senior Lender arising out of (i) any and all actions which Senior Lender takes or omits to take (including without limitation actions with respect to the creation, perfection or continuation of liens or security interests in any existing or future Senior Lender's Collateral, actions with respect to the occurrence of an event of default under any documents, instruments or agreements evidencing the Senior Debt, actions with respect to the foreclosure upon, sale, release, or depreciation of, or failure to realize upon, any of Senior Lender's Collateral and actions with respect to the collection of any claim for all or any part of the Senior Debt from any account debtor, guarantor or other person or entity) with respect to the documents, instruments and agreements evidencing the Senior Debt or to the collection of the Senior Debt or the valuation, use, protection or release of Senior Lender's Collateral, (ii) Senior Lender's election (whether on behalf of Senior Lender or Junior Lender) in any proceeding instituted under the Bankruptcy Code, and/or (iii) any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code by Borrower, as debtor-in-possession.

4. Further Assurances. Junior Lender agrees that Senior Lender, at any time and from time to time hereafter, may enter into such agreements with Borrower as Senior Lender may deem proper extending the time of payment of or renewing or otherwise altering the terms of all or any of the Senior Debt or affecting any of Senior Lender's Collateral, and may sell or surrender or otherwise deal with any of Senior Lender's Collateral, and may release any balance of funds of Borrower with Senior Lender, without notice to Junior Lender and without in any way impairing or affecting this Subordination Agreement.

5. CONTINUING AGREEMENT. THIS SUBORDINATION AGREEMENT SHALL BE IRREVOCABLE AND SHALL CONSTITUTE A CONTINUING AGREEMENT OF SUBORDINATION AND SHALL BE BINDING ON JUNIOR LENDER AND ITS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS, AND SHALL INURE TO THE BENEFIT OF SENIOR LENDER, AND ITS SUCCESSORS AND ASSIGNS UNTIL SENIOR LENDER HAS, IN WRITING, NOTIFIED JUNIOR LENDER THAT ALL OF THE SENIOR DEBT HAS BEEN PAID IN FULL AND ALL OBLIGATIONS ARISING IN

UNOFFICIAL COPY

CONNECTION THEREWITH HAVE BEEN DISCHARGED. SENIOR LENDER MAY CONTINUE, WITHOUT NOTICE TO JUNIOR LENDER, TO LEND MONIES, EXTEND CREDIT AND MAKE OTHER ACCOMMODATIONS TO OR FOR THE ACCOUNT OF BORROWER ON THE FAITH HEREOF. JUNIOR LENDER HEREBY AGREES THAT ALL PAYMENTS RECEIVED BY SENIOR LENDER MAY BE APPLIED, REVERSED, AND REAPPLIED, IN WHOLE OR IN PART, TO ANY OF THE SENIOR DEBT, WITHOUT IMPAIRING OR AFFECTING THIS SUBORDINATION AGREEMENT. SENIOR LENDER MAY, WITHOUT NOTICE TO OR CONSENT BY JUNIOR LENDER, MODIFY ANY TERM OF SENIOR DEBT IN RELIANCE UPON THIS SUBORDINATION AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SENIOR LENDER MAY, AT ANY TIME AND FROM TIME TO TIME, WITHOUT THE CONSENT OF OR NOTICE TO JUNIOR LENDER AND WITHOUT INCURRING RESPONSIBILITY TO JUNIOR LENDER OR IMPAIRING OR RELEASING ANY OF SENIOR LENDER'S RIGHTS OR ANY OF JUNIOR LENDER'S OBLIGATIONS HEREUNDER:

(A) INCREASE THE PRINCIPAL AMOUNT OF SENIOR DEBT, CHANGE THE INTEREST RATE, CHANGE THE AMOUNT OF PAYMENT, EXTEND THE TIME FOR PAYMENT OR RENEW OR OTHERWISE ALTER THE TERMS OF ANY SENIOR DEBT OR ANY INSTRUMENT EVIDENCING THE SAME IN ANY MANNER;

(B) SELL, EXCHANGE, RELEASE OR OTHERWISE DEAL WITH ANY PROPERTY AT ANY TIME SECURING PAYMENT OF THE SENIOR DEBT OR ANY PART THEREOF;

(C) RELEASE ANYONE LIABLE IN ANY MANNER FOR THE PAYMENT OR COLLECTION OF THE SENIOR DEBT OR ANY PART THEREOF;

(D) EXERCISE OR REFRAIN FROM EXERCISING ANY RIGHT AGAINST BORROWER OR ANY OTHER PERSON (INCLUDING JUNIOR LENDER); AND

(E) APPLY ANY SUMS RECEIVED BY SENIOR LENDER, BY WHOMSOEVER PAID AND HOWEVER REALIZED, TO SENIOR DEBT IN SUCH MANNER AS SENIOR LENDER SHALL DEEM APPROPRIATE.

6. No Reliance. Junior Lender hereby assumes responsibility for keeping itself informed of the financial condition of Borrower, and of all other circumstances bearing upon the risk of nonpayment of the Senior Debt and the Junior Debt that diligent inquiry would reveal, and Junior Lender hereby agrees that Senior Lender shall have no duty to advise Junior Lender of information known to Senior Lender regarding such condition or any such circumstances or to undertake any investigation. If Senior Lender, in its sole discretion, undertakes, at any time or from time to time, to provide any information of the type described herein to Junior Lender, Senior Lender shall be under no obligation to subsequently update any such information or to provide any such information to Junior Lender on any subsequent occasion.

7. Duty Limited. The rights granted to Senior Lender in this Subordination Agreement are solely for its protection and nothing herein contained imposes on Senior Lender any duties with respect to any property of Borrower or of Junior Lender received by Senior Lender beyond the duty to exercise reasonable care in the custody and preservation of such property while

UNOFFICIAL COPY

in Senior Lender's possession. Senior Lender shall have no duty to preserve rights against prior parties on any instrument or chattel paper received from Borrower or Junior Lender as collateral security for the Senior Debt or any portion thereof.

8. No Marshalling. Junior Lender, on its own behalf and on behalf of its successors and assigns hereby expressly waives all rights, if any, to require a marshalling of Borrower's assets by Senior Lender or to require that Senior Lender first resort to some or any portion of any collateral for the Senior Debt before foreclosing upon, selling or otherwise realizing on any other portion thereof.

9. Reinstatement. To the extent that Borrower makes a payment to Senior Lender or Senior Lender receives any payment or proceeds of the collateral securing the Senior Debt for Borrower's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable doctrine, then, to the extent of such payment or proceeds received and not retained by Senior Lender, Junior Lender's obligations intended to be satisfied thereby and this Subordination Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to Senior Lender. Junior Lender agrees to hold in trust for Senior Lender and promptly remit to Senior Lender any payments received by Junior Lender after such invalidated, rescinded or returned payment was originally made.

10. Waiver in Writing. No waiver shall be deemed to be made by Senior Lender of any of their rights hereunder unless the same shall be in writing signed by Senior Lender and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights of Senior Lender or the obligations of Junior Lender to Senior Lender in any other respect at any other time.

11. Choice of Law. This Subordination Agreement shall be governed and controlled by the internal laws of the State of Illinois.

12. FORUM. TO INDUCE SENIOR LENDER TO ACCEPT THIS SUBORDINATION AGREEMENT, JUNIOR LENDER IRREVOCABLY AGREES THAT, SUBJECT TO SENIOR LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS SUBORDINATION AGREEMENT SHALL BE LITIGATED IN COURTS HAVING SITUS WITHIN THE CITY OF CHICAGO, STATE OF ILLINOIS. JUNIOR LENDER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURTS LOCATED WITHIN SAID CITY AND STATE. JUNIOR LENDER HEREBY IRREVOCABLY APPOINTS AND DESIGNATES THE SECRETARY OF STATE OF ILLINOIS, WHOSE ADDRESS IS LOCATED IN SPRINGFIELD, ILLINOIS (OR ANY OTHER PERSON HAVING AND MAINTAINING A PLACE OF BUSINESS IN SUCH STATE WHOM JUNIOR LENDER MAY FROM TIME TO TIME HEREAFTER DESIGNATE UPON TEN (10) DAYS WRITTEN NOTICE TO SENIOR LENDER AND WHO SENIOR LENDER HAS AGREED IN ITS SOLE DISCRETION IN WRITING IS SATISFACTORY AND WHO HAS EXECUTED AN AGREEMENT IN FORM AND SUBSTANCE SATISFACTORY

UNOFFICIAL COPY

TO SENIOR LENDER AGREEING TO ACT AS SUCH ATTORNEY AND SENIOR LENDER), AS JUNIOR LENDER'S TRUE AND LAWFUL ATTORNEY AND DULY AUTHORIZED SENIOR LENDER FOR ACCEPTANCE OF SERVICE OF LEGAL PROCESS. JUNIOR LENDER AGREES THAT SERVICE OF SUCH PROCESS UPON SUCH PERSON SHALL CONSTITUTE PERSONAL SERVICE OF SUCH PROCESS UPON JUNIOR LENDER. JUNIOR LENDER HEREBY WAIVES ANY RIGHT IT HAS TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST JUNIOR LENDER BY SENIOR LENDER IN ACCORDANCE WITH THIS PARAGRAPH.

13. WAIVER OF JURY TRIAL. JUNIOR LENDER AND SENIOR LENDER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY, THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS SUBORDINATION AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO SENIOR LENDER GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER AND ENTERING INTO THIS SUBORDINATION AGREEMENT.

14. Additional Borrower Agreements.

14.1 Borrower hereby agrees that until all Senior Debt is paid in full and all obligations arising in connection therewith have been satisfied, Borrower will make no payments or distributions contrary to the provisions hereof and will do every other thing necessary to carry out such provisions. Borrower will give Senior Lender notice of any suit or action brought in violation of said agreement.

14.2 Borrower represents and warrants to Senior Lender that no Junior Debt Default exists and agrees to promptly provide Senior Lender with written notice of any Junior Debt Default.

14.3 In the event of any violation of any of the provisions of this Subordination Agreement, then, at the election of Senior Lender, any and all obligations of Borrower to Senior Lender shall immediately become due and payable and any and all agreements of Senior Lender to make loans, advances or other financial accommodations to Borrower shall immediately terminate, notwithstanding any provision hereof to the contrary.

15. Facsimile and Electronic Signatures. Senior Lender is hereby authorized to rely upon and accept as an original this Subordination Agreement or other communication which is sent to Senior Lender by facsimile, telegraphic or other electronic transmission (each, a "Communication") which Senior Lender in good faith believes has been signed by each party and has been delivered to Senior Lender by a properly authorized representative of each party, whether or not that is in fact the case. Notwithstanding the foregoing, Senior 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 Senior Lender in lieu of, or in addition to, any such Communication.

UNOFFICIAL COPY

16. Notices. Any notice or service of process given, or required to be given, pursuant hereto and in connection herewith shall be in writing and shall be deemed to be properly given: (a) when personally delivered; (b) the first or second business day after the notice is deposited with a nationally recognized overnight courier service with arrangements made for payment of charges for next or second business day delivery, respectively; or (c) two business days after the date sent by certified mail return receipt requested, in each case addressed to the party for whom it is intended at its address set forth in the preamble of this Subordination Agreement, or such address as subsequently provided to all parties in writing.

[SIGNATURE PAGE FOLLOWS]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Junior Lender, Senior Lender and Borrower have executed this Subordination Agreement as of the date set forth above.

JUNIOR LENDER:

OAKTON ARMS LIMITED PARTNERSHIP,
an Illinois limited partnership

By: _____
Name:
Its:

OAKTON TERRACE NURSING HOME,
an Illinois limited partnership

By: _____
Name:
Its:

SENIOR LENDER:

CIBC BANK USA,
an Illinois banking corporation

By: Natalie Krapfl
Name: Natalie Krapfl
Its: Associate Managing Director

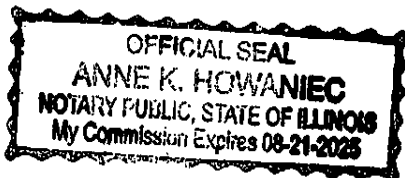
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF IL)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do certify that NATALIE KRAPFL, the Associate Managing Director of CIBC BANK USA, an Illinois banking corporation, 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 she signed, delivered and attested the said instrument as her free and voluntary act and as the free voluntary act of the foregoing bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this February, 2024.



Anne Howaniec
Notary Public

My commission expires: 8.21.25

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Junior Lender, Senior Lender and Borrower have executed this Subordination Agreement as of the date set forth above.

JUNIOR LENDER:

OAKTON ARMS LIMITED PARTNERSHIP,
an Illinois limited partnership

By: 
Name: JACK M KATZ
Its: GENERAL PARTNER

OAKTON TERRACE NURSING HOME,
an Illinois limited partnership

By: 
Name: JACK M KATZ
Its: GENERAL PARTNER

SENIOR LENDER:

CIBC BANK USA,
an Illinois banking corporation

By: _____
Name: Natalie Krapfl
Its: Associate Managing Director

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do certify that JACK M KATZ, as ~~GENERAL PARTNER~~ of OAKTON ARMS LIMITED PARTNERSHIP, an Illinois limited partnership, 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 signed, delivered and attested the said instrument as his free and voluntary act and as the free voluntary act of the foregoing company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 14TH DAY OF FEBRUARY, 2024.

K. Garcia

Notary Public



My commission expires: 7.14.24

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do certify that JACK M KATZ, as ~~GENERAL PARTNER~~ of OAKTON TERRACE NURSING HOME, an Illinois limited partnership, 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 signed, delivered and attested the said instrument as his free and voluntary act and as the free voluntary act of the foregoing company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this FEBRUARY 14, 2024.

K. Garcia

Notary Public



My commission expires: 7.14.24

UNOFFICIAL COPY

CONSENT

Borrower hereby consents to the foregoing Subordination Agreement (and the terms thereof, including without limitation Sections 1.5 and 14) and agrees to abide thereby and to keep, observe and perform the several matters and things therein intended to be kept, observed and performed by it, and specifically agrees not to make any payments contrary to the intention and terms of the Subordination Agreement.


A breach of any of the terms or conditions contained in the Subordination Agreement shall constitute a default in any and all of the Senior Debt.

Signed and delivered by Borrower as of February 14th, 2024.

BORROWER:

**GENERATIONS HEALTH CARE PROPERTY
OF DES PLAINES, LLC,**
an Illinois limited liability company

By: Brysson Care, Inc., an Illinois corporation
Its: Manager

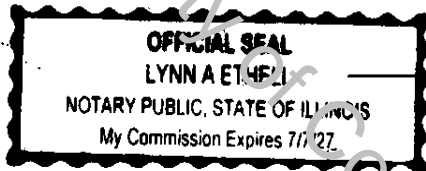
By: 
Name: Thomas Winter
Its: Treasurer

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do certify that THOMAS WINTER, as Treasurer of Brysson Care, Inc., an Illinois corporation, the Manager of GENERATIONS HEALTH CARE PROPERTY OF DES PLAINES, LLC, an Illinois limited liability company, 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 signed, delivered and attested the said instrument as his free and voluntary act and as the free voluntary act of the foregoing company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 14TH DAY OF FEBRUARY 2024.



Lynn A Ethell

Notary Public

My commission expires: 07/07/2027

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOTS 5 AND 6 IN OAKTON PLACE, A SUBDIVISION OF PART OF THE NORTH 25 ACRES OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON NOVEMBER 1, 1967 AS DOCUMENT NO. LR2356973, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF LOT 5 FOR INGRESS AND EGRESS OVER, THROUGH, UNDER AND ACROSS PART OF LAND EAST OF AND ADJOINING SUBJECT LAND AS SET FORTH IN EASEMENT AGREEMENT FILED JUNE 26, 1987 AS DOCUMENT NO. LR3629607.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF LOT 6 FOR INGRESS AND EGRESS OVER, THROUGH, UNDER AND ACROSS PART OF LAND WEST OF AND ADJOINING SUBJECT LAND AS SET FORTH IN EASEMENT AGREEMENT FILED JUNE 26, 1987 AS DOCUMENT NO. LR3629607.

BEING THE SAME LAND CONVEYED TO LASALLE NATIONAL BANK UNDER TRUST AGREEMENT DATED JULY 10, 1975 AND KNOWN AS TRUST NUMBER 10-30182-09 RECORDED JUNE 6, 1983 AS DOCUMENT NO. LR3311366 AS TO LOT 5 AND BEING THE SAME LAND CONVEYED TO OAKTON ARMS, AN ILLINOIS LIMITED PARTNERSHIP RECORDED OCTOBER 23, 1995 AS DOCUMENT NO. 95720730.

PINs:

09-29-106-006-0000 and 09-29-106-007-0000

Commonly Known As:

1660 and 1665 Oakton Place, Des Plaines, IL 60018