

# UNOFFICIAL COPY

96533900

DEPT-01 RECORDING \$35.00  
 T40012 TRAN 1300 07/12/96 11:59:00  
 #2037 # RC \*--96--533900  
 COOK COUNTY RECORDER

This Document Prepared By  
and Should Be Returned To:

Susan Z. Gumble  
 Attorney at Law  
 Summers, Compton, Wells & Hamburg  
 8909 Ladue Road  
 St. Louis, MO 63124  
 (314) 991-4999

## SUBORDINATION AND ATTORNMEN AGREEMENT

THIS AGREEMENT is made and entered into as of June 28, 1996, by and among NORTHBROOK REAL ESTATE, L.L.C., an Illinois limited liability company with an address of 26 HSM Construction Services, Inc., 11701 Borman Drive, Suite 315, St. Louis, Missouri 63146 (collectively "Landlord") ROSEWOOD CARE CENTER, INC. OF NORTHBROOK ("Tenant"), and MERCANTILE BANK OF ST. LOUIS NATIONAL ASSOCIATION ("Bank").

### WITNESETH:

WHEREAS, Bank is the owner and holder of that certain Note dated June 28, 1996, and made by Landlord to the order of Rosewood Financing, L.L.C. ("Borrower") and endorsed by Borrower to Bank, which Note is secured by that certain Mortgage dated as of June 28, 1996, between Landlord and Borrower (the "Mortgage") constituting a first lien and encumbrance upon property described therein, which Mortgage has been assigned to Bank pursuant to a Loan Agreement, dated as of August 25, 1994 (the "Loan Agreement") between Borrower and Bank.

WHEREAS, Landlord and Tenant have entered into that certain Revised and Restated Lease (the "Lease"), dated as of June 28, 1996, with respect to certain premises (the "Leased Premises") which are part of the real property conveyed by the Mortgage (the "Property"), which Property is more particularly described on annexed Exhibit "A".

WHEREAS, Tenant wishes to obtain from Bank certain limited assurances that Tenant's possession of the Leased Premises will not, subject to the terms and conditions of this Agreement, be disturbed by reason of a foreclosure of the lien of the Mortgage on the Property; and

BOX 333-CTI

7614826  
 771-D2  
 334

350  
 035  
 33M

96533900

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

WHEREAS, Bank is willing to provide such limited assurances to Tenant upon and subject to the terms and conditions of this Agreement.

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

1. Landlord and Tenant hereby subordinate the Lease to the Mortgage and agree with Bank that the Lease shall at all times be subject and subordinate in all respects to the Mortgage and to all renewals, modifications, and extensions thereof, subject to the terms and conditions of this Agreement.
2. Tenant shall give prompt written notice to Bank of all defaults by Landlord under the Lease.
3. So long as Tenant is not in default in the payment of rent, additional rent, or other charges or in the performance of any of the other terms, covenants, or conditions of the Lease, and so long as no "Event of Default" has occurred under the Loan Agreement or the Mortgage, Tenant shall not be disturbed by Bank in Tenant's possession, enjoyment, use, and occupancy of the Leased Premises during the original or any renewal terms of the Lease or any extensions or modification thereof. Tenant, however, agrees with Bank that an Event of Default under the Mortgage or the Loan Agreement shall be deemed to be a default by Tenant under the Lease, and Bank shall thereafter have the right to terminate the Lease and exclude Tenant from the Leased Premises.
4. No person or entity who exercises a right arising under the Mortgage or any assignment of the Lease to receive the rents payable by Tenant under the Lease shall thereby become obligated to Tenant for the performance of any of the terms, covenants, conditions, and agreements of Landlord under the Lease. Landlord and Tenant agree that Tenant shall make all payments to be made by Tenant under the Lease to such person or entity upon receipt of written notice of the exercise of such rights, and Tenant agrees not to prepay any sums payable by Tenant under the Lease. Such receipt of rent by any other party shall not relieve Landlord of its obligations under the Lease, and Tenant shall continue to look to Landlord only for performance thereof.
5. If the interest of Landlord shall be acquired by Bank or any other person by reasons of foreclosure of the Mortgage or other proceedings brought to enforce the rights of the holder thereof, by deed in lieu of foreclosure or by any other method and if Bank or such other person succeeds to the interest of Landlord under the Lease and Bank has not exercised its right to terminate the Lease as described above, the Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated or disturbed except in accordance with the terms of the Lease; and Tenant shall be bound to Bank or such other person under all of the terms, covenants, and conditions of the Lease for the balance of the term thereof remaining and for any extensions or renewals thereof contained in the Lease, with the same force and effect as if Bank or such other person were the landlord under the Lease; and Tenant does hereby attorn to Bank or such other person as its landlord, said attornment to be effective and self-operative without the execution of any other instruments on the part of either party hereto immediately upon Bank or such other person's succeeding to the interest of Landlord under the Lease, and Tenant hereby agrees that neither Bank nor such other person shall be responsible or liable in any way for any default under the Lease occurring prior to the time Bank or such other person obtains title to the Property and is entitled to actual, unrestricted possession of the Leased

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Premises. Notwithstanding anything to the contrary contained in this Agreement, if the interest of Landlord shall be acquired by any person (other than Bank or a person acting on behalf of Bank) who is not an affiliate of Tenant by reasons of foreclosure of the Mortgage or other proceedings brought to enforce the rights of the holder thereof, by deed in lieu of foreclosure or by any other method, the provisions of the Lease with respect to the amount of rent to be paid by Tenant shall not continue in effect and Tenant shall not be required to pay any rent to such purchaser or successor unless and until such purchaser or successor and Tenant, acting in good faith, shall agree on the amount of rent to be payable under the Lease.

6. In addition to and not in lieu of all of the other provisions of this Agreement, Bank shall not in any way or to any extent be:

- a. Liable for any act or omission of any landlord (including Landlord); or
- b. subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or
- c. bound by any rent or additional rent which Tenant might have paid for more than thirty (30) days in advance to any prior landlord (including Landlord); or
- d. bound by any amendment or modification of the Lease made without Bank's consent; or
- e. in any way responsible for any deposit or security which was delivered to Landlord but which was not subsequently delivered to Bank.

7. Tenant hereby affirms that the Lease has not been modified or amended and no default has occurred and is continuing thereunder.

8. All notices, demands, or requests, and responses thereto required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served and shall be effective upon being deposited in the United States Mail, postpaid and registered or certified with return receipt requested or commercial delivery service or facsimile transmission. Any such notice shall be addressed as follows or at such other address as any party may designate by notice in writing:

96533900

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Landlord: Northbrook Real Estate, L.L.C.  
11701 Borman Drive, Suite 315  
St. Louis, MO 63146  
Attention: Mr. Larry D. Vander Maten, President  
Telecopy: (314) 994-9912  
Confirmation: (314) 994-9070

Tenant: Rosewood Care Center, Inc. of Northbrook  
11701 Borman Drive, Suite 315  
St. Louis, MO 63146  
Attention: Mr. Larry D. Vander Maten, President  
Telecopy: (314) 994-9912  
Confirmation: (314) 994-9070

Bank: Mercantile Bank of St. Louis National Association  
Mercantile Tower  
P.O. Box 524  
St. Louis, Missouri 63166-0524  
Attention: Real Estate Division (Tram 12-1)  
Telecopy: (314) 425-2162  
Confirmation: (314) 425-8191

9. This Agreement shall be binding upon and inure to the parties, their respective heirs, successors, and assigns.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

11. **LANDLORD AND TENANT IRREVOCABLY WAIVE THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION RELATING TO THE TRANSACTION WITH BANK IN WHICH LANDLORD AND/OR TENANT IS A PARTY.**

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

NORTHBROOK REAL ESTATE, L.L.C.

By:   
Larry D. Vander Maten, Manager

95533300

UNOFFICIAL COPY

Property of Cook County Clerk's Office



UNOFFICIAL COPY

ROSEWOOD CARE CENTER, INC. OF INVERNESS

By: [Signature]  
Larry D. Vander Maten, President

ATTEST: [Signature]  
Louis I. Netenmeyer, Secretary

MERCANTILE BANK OF ST. LOUIS  
NATIONAL ASSOCIATION

By: [Signature]  
Name: DAVID PARKER  
Title: VICE PRESIDENT

[SEAL]

ATTEST: [Signature]  
Name: AMY B. COYLAND  
Title: Asst. Secretary

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF MISSOURI )  
 )  
COUNTY OF ST. LOUIS ) SS

On this 26<sup>th</sup> day of June, 1996 before me appeared LARRY D. VANDER MATEN, to me personally known, who, being by me duly sworn, did say that he is the Manager of Northbrook Real Estate, L.L.C., and that said Subordination and Attornment Agreement was signed in behalf of said limited liability company, and said LARRY D. VANDER MATEN acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Mia Cakalic  
Notary Public

My commission expires: **MIA CAKALIC**  
**NOTARY PUBLIC STATE OF MISSOURI**  
**ST. CHARLES COUNTY**  
**MY COMMISSION EXP. MAR. 28, 1999**

STATE OF MISSOURI )  
 )  
COUNTY OF ST. LOUIS ) SS

On this 26<sup>th</sup> day of June, 1996 before me appeared LARRY D. VANDER MATEN, to me personally known, who, being by me duly sworn, did say that he is the President of Rosewood Care Center, Inc. of Northbrook, and that said Subordination and Attornment Agreement was signed in behalf of said corporation, by authority of its Board of Directors, and said LARRY D. VANDER MATEN acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Mia Cakalic  
Notary Public

My commission expires:  
**MIA CAKALIC**  
**NOTARY PUBLIC STATE OF MISSOURI**  
**ST. CHARLES COUNTY**  
**MY COMMISSION EXP. MAR. 28, 1999**

96533900

UNOFFICIAL COPY

Property of Cook County Clerk's Office



UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT "A" LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

### PARCEL 1:

THE EAST 313 FEET OF THE WEST 473 FEET OF LOT 3 IN COUNTY CLERK'S DIVISION OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 6, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING FROM SAID TRACT THE SOUTH 17 FEET OF THE NORTH 50 FEET OF SAID EAST 313 FEET OF THE WEST 473 FEET OF THE NORTHEAST 1/4 OF THE EAST 1/2 OF LOT 2 AFORESAID CONVEYED TO THE COUNTY OF COOK BY DEED RECORDED JANUARY 7, 1974 AS DOCUMENT 22587485), IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 04-06-101-007-0000.

### PARCEL 2:

THE WEST 160 FEET OF THE NORTHEAST 1/4 OF THE EAST 1/2 OF LOT 2 IN THE NORTHWEST 1/4 OF SECTION 6, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 04-06-101-006-000.

Parcel 1 and Parcel 2 are commonly referred to as 4065-4105 Lake Cook Road, Illinois

1173013

965333900

UNOFFICIAL COPY

Property of Cook County Clerk's Office