



W2747684

Recording Requested:

Pepper Hamilton LLP
600 14th Street, NW
Washington, DC 20005
Attn: Blair Schiff, Esq.

E# 2747684 PG 1 OF 10
Leann H. Kilts, WEBER COUNTY RECORDER
27-Jul-15 11:24 AM FEE \$28.00 DEP DS
REC FOR: FOUNDERS TITLE COMPANY
ELECTRONICALLY RECORDED

F86704W

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT OF
OPERATING LEASE

Ogden RP SNF, LLC

Tax Parcel No. 07-556-0004

ds

Subordination , Non-Disturbance and Attornment Agreement of Operating Lease

U.S. Department of Housing and Urban Development
Office of Residential Care Facilities

OMB Approval No. 2502-0605
(exp. 06/30/2017)

Public reporting burden for this collection of information is estimated to average 0.5 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Warning: Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

Recording requested by and after recording return to:

Pepper Hamilton LLP
600 14th Street, NW
Washington, DC 20005
Attn: Blair Schiff, Esq.

(Space above this line for Recorder's Use)

INSTRUCTIONS: THIS FORM IS NOT FOR USE IN PROJECTS INVOLVING A MASTER LEASE.

NOTICE: THE SUBORDINATION PROVIDED FOR IN THIS AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE INTEREST CREATED BY SOME OTHER OR LATER INSTRUMENT.

SUBORDINATION AGREEMENT(of Operating Lease)

This AGREEMENT (this "Agreement"), is entered into as of this 1st day of July, 2015, by and between OGDEN RP SNF, LLC, a limited liability company organized and existing under the laws of Utah ("Lessor"), as lessor under the Operator Lease hereinafter described, and AHC OGDEN LLC, a limited liability company organizing and existing under the laws of Idaho ("Lessee"), lessee under the aforementioned Operator Lease, in favor of Berkadia Commercial Mortgage LLC, a limited liability company organized and existing under the laws of Delaware ("Lender"), the owner and holder of the Borrower's Security Instrument hereinafter described.

WITNESSETH:

F86704w

WHEREAS, Lessor has or will execute that certain Healthcare Trust Deed, Assignment Of Leases, Rents And Revenue And Security Agreement (Utah), dated as of the 1st day of July, 2015 (the "**Borrower's Security Instrument**"), in favor of Lender and covering certain real property (the "**Land**") located in South Ogden, Weber County, Utah, with a legal description as set forth in Exhibit A, attached hereto and, which the Borrower's Security Instrument is being recorded concurrently herewith; and

WHEREAS, Lessor and Lessee entered into that certain unrecorded lease dated September 4, 2014, as it may thereafter be amended (the "**Operator Lease**"), relating to the Operator's operation of a healthcare facility (the "**Healthcare Facility**") on the Land upon the terms and conditions set forth therein; and

WHEREAS, Lessee has or will execute that certain Operator Security Agreement, dated as of July 1, 2015 (the "Operator's Security Agreement") in favor of Lender, granting lender a security interest in the Healthcare Facility; and

WHEREAS, the parties hereto now desire to enter into this Agreement to establish certain rights and obligations with respect to their interests, and to provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration for the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that the Operator Lease, all terms and conditions set forth in the Operator Lease, the leasehold interests and estates created thereby, and the priorities, rights, privileges and powers of Lessee and Lessor thereunder shall be and the same are hereby, and with full knowledge and understanding of the effect thereof, unconditionally made subject and subordinate to the lien and charge of the Borrower's Security Instrument, all terms and conditions contained therein, any renewals, extensions, modifications or replacements thereof, and the rights, privileges and powers of the trustee and Lender thereunder, and shall hereafter be junior and inferior to the lien and charge of the Borrower's Security Instrument. The parties further agree as follows:

1. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the provisions of the Operator Lease relating to the subordination of the Operator Lease and the leasehold interests and estates created thereby to the lien or charge of the Borrower's Security Instrument.

2. Lender consents to the Operator Lease.

3. In the event Lender or any other purchaser at a foreclosure sale or sale under private power contained in the Borrower's Security Instrument, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Operator Lease, or by any manner, it is agreed as follows:

(a) Lessee shall be bound to Lender or such other purchaser under all of the terms, covenants and conditions of the Operator Lease for the remaining balance of the term thereof, with the same force and effect as if Lender or such other purchaser were the lessor under the Operator Lease, and Lessee does hereby agree to attorn to Lender or such other purchaser as its lessor, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon Lender or such other purchaser succeeding to the interest of Lessor under the Operator Lease.

(b) Intentionally Omitted.

4. Lessee hereby agrees that it will not exercise any right granted it under the Operator Lease, or which it might otherwise have under applicable law, to terminate the Operator Lease on account of a default of Lessor thereunder or the occurrence of any other event without first giving to Lender prior written notice of its intent to terminate, which notice shall include a statement of the default or event on which such intent to terminate is based. Thereafter, Lessee shall not take any action to terminate the Operator Lease if Lender (a) within thirty (30) days after service of such written notice on Lender by Lessee of its intention to terminate the Operator Lease, shall cure such default or event if the same can be cured by the payment or expenditure of money, or (b) shall diligently take action to obtain possession of the Healthcare Facility, as such term is defined in the Borrower's Security Instrument (including possession by receiver) and to cure such default or event in the case of a default or event which cannot be cured unless and until Lender has obtained possession, but in no event to exceed ninety (90) days after service of such written notice on Lender by Lessee of its intention to terminate.

5. For the purposes of facilitating Lender's rights hereunder, Lender shall have, and for such purposes is hereby granted by Lessee and Lessor, the right to enter upon the Land and the Healthcare Facility thereon for the purpose of effecting any such cure.

6. If Lessee gives a notice of default under the Operator Lease, Lessee hereby agrees to concurrently provide Lender a copy of such notice, and no such notice given to Lessor which is not concurrently given to Lender shall be valid or effective against Lender for any purpose.

7. Subordination of the Operator Lease to the Borrower's Security Instrument and Regulatory Agreements and Program Obligations.

(a) The Operator Lease and all estates, rights, options, liens and charges therein contained or created under the Operator Lease are and shall be subject and subordinate to the lien or interest of (i) the Borrower's Security Instrument on Lessor's interest in the Land in favor of Lender, its successors and assigns insofar as it affects the real and personal property comprising the Mortgaged Property (as such term is defined in the Borrower's Security Instrument and not otherwise owned or licensed by Lessee) or located thereon or therein, and to all renewals, modifications, consolidations, replacements and extensions of the Borrower's Security Instrument, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interests thereon, (ii) that certain Healthcare Regulatory Agreement – Borrower between Lessor and the U.S. Department of Housing and Urban Development

("HUD") to be recorded against the Land (the "**Borrower's Regulatory Agreement**"), and (iii) that certain Healthcare Regulatory Agreement – Operator between Lessee and HUD to be recorded against the Land (the "**Operator's Regulatory Agreement**") ((ii) and (iii) are collectively referred to herein as the "**Regulatory Agreements**").

(b) The parties to the Operator Lease agree to execute and deliver to Lender and/or HUD such other instrument or instruments as Lender and/or HUD, or their respective successors or assigns, shall reasonably request to effect and/or confirm the subordination of the Operator Lease to the lien of the Borrower's Security Instrument and the Regulatory Agreements. To the extent that any provision of the Operator Lease shall be in conflict with Program Obligations (as such term is defined below), Program Obligations shall be controlling.

(c) In the event HUD succeeds to the interest of Lessor under the Operator Lease by reason of any foreclosure of the Borrower's Security Instrument or by HUD's acceptance of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:

- (i) HUD can terminate the Operator Lease (A) for any violation of the Operator Lease that is not cured within any applicable notice and cure period given in the Operator Lease, (B) for any violation of the Operator's Regulatory Agreement, pursuant to its terms; (C) for any violation of Program Obligations or Healthcare Requirements (both as defined below) that is not cured within thirty (30) days of Lessee's receipt of written notice of such violation; provided, however, that if such cure reasonably requires more than thirty (30) days to cure, HUD may not terminate the Operator Lease if Lessee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion, (D) if HUD, as a result of the occurrence of any of the events described in the foregoing items (A), (B), or (C) is required to advance funds for the operation of the Healthcare Facility, or [(E) if the Lessor has an identity of interest with the Lessee, for any reason].

- (ii) As used in this Agreement:

(A) "**Program Obligations**" means (1) all applicable statutes and any regulations issued by HUD pursuant thereto that apply to the Healthcare Facility, except that changes subject to notice and comment rulemaking shall become effective upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Healthcare Facility, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Healthcare Facility only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices and mortgagee letters are available on HUD's official website:

<http://www.hud.gov/offices/adm/hudclips/ondex.cfm> or a successor location to that site.

(B) "Healthcare Requirements" means, relating to the Land, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions or agreements, in each case, pertaining to or concerned with the establishment, construction, ownership, operation, use or occupancy of the Healthcare Facility or any part thereof as a healthcare facility, and all material permits, licenses and authorizations and regulations relating thereto, including all material rules, orders, regulations and decrees of and agreements with healthcare authorities pertaining to the Healthcare Facility.

(d) To the extent there is any inconsistency between the terms of this Agreement, and the Operator Lease, the terms of this Agreement shall be controlling.

8. Notices to be given to Lender hereunder shall be sent by U.S. certified mail, return receipt requested, postage prepaid, to Lender at the following address:

Berkadia Commercial Mortgage LLC
323 Norristown Road, Suite 300
Ambler, Pennsylvania 19002

or to such other address as Lender may provide Lessee in writing by notice sent to Lessee at the Healthcare Facility, or such other address as Lessee may provide in writing by notice sent to Lender.

9. The agreements contained herein shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.

10. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute a single instrument.

11. This Agreement and all rights and obligations under this Agreement, including matters of construction, validity and performance, shall be governed by the laws of the state in which the Healthcare Facility is located, without giving effect to conflicts of law principles.

12. The following Exhibit is attached to this Agreement:

Exhibit A Legal Description of the Land

[SEE ATTACHED SIGNATURE PAGES]

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.

LESSOR:

OGDEN RP SNF, LLC,
a Utah limited liability company

By: *David W. Nattress*
David W. Nattress
Authorized Representative

State of Utah

County of DAVIS

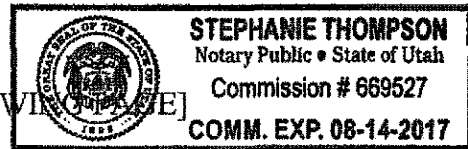
The foregoing instrument was acknowledged before me this 22 day of July, 2015 by DAVID W. NATTRESS, known to me to be the Authorized Representative of OGDEN RP SNF, LLC, a Utah limited liability company, whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Witness my hand and official seal.

[Signature]
Notary Public

My commission expires: 08/14/2017

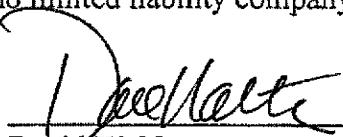
[SIGNATURES CONTINUE ON FOLLOWING PAGE]



LESSEE:

AHC OGDEN LLC,
an Idaho limited liability company

By:



David W. Nattress
Authorized Representative

State of Utah

County of Davis

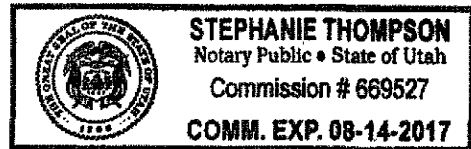
The foregoing instrument was acknowledged before me this 22 day of July, 2015 by David W. Nattress the Authorized Representative of AHC OGDEN LLC, an Idaho limited liability company, whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Witness my hand and official seal.



Notary Public

My commission expires: 08/14/2017



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

FHA LENDER:

Berkadia Commercial Mortgage LLC
a Delaware limited liability company

By: Dede Matthews

Name: _____
Dede Matthews
Authorized Representative

STATE OF MISSOURI)
) ss.
CITY OF ST. LOUIS)

This instrument was acknowledged before me, the undersigned Notary Public, on this 15th day of July, 2015, by Dede Matthews, who acknowledged himself/ herself to be the Authorized Representative of Berkadia Commercial Mortgage LLC. In witness whereof, I hereunto set my hand and official seal.

ANGELA MOORE
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis City
My Commission Expires: June 18, 2017
Commission Number: 13381465

Angela Moore
Notary Public

My commission expires:

EXHIBIT A
LEGAL DESCRIPTION

All of Lot 5, Granite Pointe Phase 1, South Ogden City, Weber County, Utah, according to the Official Plat thereof recorded January 19, 2000 as Entry No. 1685049 in Book 51 at Page 35 of Official Weber County Records.