


RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:



ENT 89200:2013 PG 1 of 9  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2013 Sep 18 10:54 am FEE 26.00 BY EO  
RECORDED FOR FIDELITY LAND & TITLE

FIDELITY TITLE  
FILE # 22651

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(Space above this line for Recorder's Use)

**SUBORDINATION AGREEMENT**

**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.**

THIS AGREEMENT, made as of this 1<sup>st</sup> day of September, 2013, by and between B D & E Properties, L.C. ("Mortgagor" or "Lessor"), as lessor under the lease hereinafter described, and Mountain View Nursing and Rehabilitation, Inc. ("Operator" or "Lessee"), lessee under the aforementioned lease, in favor of Prudential Huntoon Paige Associates, LLC ("FHA Mortgagee"), the owner and holder of the Mortgage hereinafter described.

**WITNESSETH:**

WHEREAS, Lessor has or will execute that certain Mortgage, dated as of September 1, 2013 (the "Mortgage"), in favor of FHA Mortgagee and covering certain real property (the "Property") located in the City of Payson, County of Utah, State of Utah, with a legal description as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, and covering the improvements situated thereon (the "Improvements"), and which Mortgage is being recorded concurrently herewith; and

WHEREAS, Lessor and Lessee entered into that certain unrecorded Lease dated September 1, 2013, as it may thereafter be amended (the "Lease"), covering the Improvements for the term and upon the conditions set forth therein; 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 Lease, all terms and conditions set forth in the Lease, the

Version: 11/1/09

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 Mortgage, all terms and conditions contained therein, any renewals, extensions, modifications or replacements thereof, and the rights, privileges and powers of the trustee and FHA Mortgagee thereunder, and shall hereafter be junior and inferior to the lien and charge of the Mortgage. 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 Lease relating to the subordination of the Lease and the leasehold interests and estates created thereby to the lien or charge of the Mortgage.

2. FHA Mortgagee consents to the Lease.

3. In the event FHA Mortgagee or any other purchaser at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by FHA Mortgagee of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:

(a) Lessee shall be bound to FHA Mortgagee or such other purchaser under all of the terms, covenants and conditions of the Lease for the remaining balance of the term thereof, with the same force and effect as if FHA Mortgagee or such other purchaser were the lessor under such Lease, and Lessee does hereby agree to attorn to FHA Mortgagee 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 FHA Mortgagee or such other purchaser succeeding to the interest of Lessor under the Lease.

(b) Subject to the observance and performance by Lessee of all the terms, covenants and conditions of the Lease on the part of the Lessee to be observed and performed, FHA Mortgagee or such other purchaser shall recognize the leasehold estate of Lessee under all of the terms, covenants and conditions of the Lease for the remaining balance of the term (as the same may be extended in accordance with the provisions of the Lease) with the same force and effect as if FHA Mortgagee or such other purchaser were the lessor under the Lease and the Lease shall remain in full force and effect and shall not be terminated, except in accordance with the terms of the Lease or this Agreement; provided, however, that FHA Mortgagee or such other purchaser shall not be (i) liable for any act or omission of Lessor or any other prior lessor, (ii) obligated to cure any defaults of Lessor or any other prior lessor under the Lease which occurred prior to the time that FHA Mortgagee or such other purchaser succeeded to the interest of Lessor or any other prior lessor under the Lease, (iii) subject to any offsets or defenses which Lessee may be entitled to assert against Lessor or any other prior lessor, (iv) bound by any payment of rent or additional rent by Lessee to Lessor or any other prior lessor for

more than one (1) month in advance, (v) bound by any amendment or modification of the Lease made without the written consent of FHA Mortgagee or such other purchaser, or (vi) liable or responsible for or with respect to the retention, application and/or return to Lessee of any security deposit paid to Lessor or any other prior landlord, whether or not still held by Lessor, unless and until FHA Mortgagee or such other purchaser has actually received for its own account as lessor the full amount of such security deposit. The non-disturbance provisions of this Section 3(b) are conditioned upon Lessor at all times having no identity of ownership interest with any of the Lessee, any management agent at the Property, any service provider to the Property, or any sub-contractor or supplier to the Property. Such determination as to an identity of ownership interest shall be made pursuant to the common definition generally used by the U.S. Department of Housing and Urban Development ("HUD") in similar agreements and transactions.

4. Lessee hereby agrees that it will not exercise any right granted it under the Lease, or which it might otherwise have under applicable law, to terminate the Lease on account of a default of Lessor thereunder or the occurrence of any other event without first giving to FHA Mortgagee 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 Lease if FHA Mortgagee (a) within thirty (30) days after service of such written notice on FHA Mortgagee by Lessee of its intention to terminate the 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 leased premises (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 FHA Mortgagee has obtained possession, but in no event to exceed ninety (90) days after service of such written notice on FHA Mortgagee by Lessee of its intention to terminate.

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

6. Lessee hereby agrees to give to FHA Mortgagee concurrently with the giving of any notice of default under the Lease, a copy of such notice by mailing the same to FHA Mortgagee in the manner set forth hereinbelow, and no such notice given to Lessor which is not at or about the same time also given to FHA Mortgagee shall be valid or effective against FHA Mortgagee for any purpose.

7. Subordination of Lease to Mortgage and Regulatory Agreements and Regulation by the U.S. Department of Housing and Urban Development ("HUD").

(a) The Lease and all estates, rights, options, liens and charges therein contained or created under the Lease are and shall be subject and subordinate to the lien or interest of (i) the Mortgage on the Lessor's interest in the Property in favor of FHA Mortgagee, its successors and assigns insofar as it affects the real and personal property

comprising the Property (and not otherwise owned, leased or licensed by Lessee) or located thereon or therein, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interest thereon, (ii) that certain Regulatory Agreement for Multifamily Housing Projects between Lessor and HUD to be recorded against the Property, and (iii) that certain Regulatory Agreement Nursing Homes between Tenant and HUD to be recorded against the Premises (the "Lessee's Regulatory Agreement").

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

(c) In the event HUD, at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by HUD of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:

(i) HUD can terminate the Lease (A) for any violation of the Lease that is not cured within any applicable notice and cure period given in the Lease, (B) for any violation of Lessee's Regulatory Agreement or other HUD Program Obligations or Health Care Requirements (both as defined below) that is not cured within thirty (30) days after receipt by Lessee 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 Lease if Lessee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion, or (C) if HUD, as a result of the occurrence of either of the events described in the foregoing items (A) or (B), is required to advance funds for the operation of the facility located on the Property.

(ii) As used in this Agreement:

(A) "HUD Program Obligations" shall mean all applicable statutes and regulations, including all amendments to such statutes and regulations, as they become effective, and all applicable requirements in HUD handbooks, notices and mortgagee letters that apply to the Property, including all updates and changes to such handbooks, notices and mortgagee letters that apply to the Property, except that changes subject to notice and comment rulemaking shall become effective upon completion of the rulemaking process.

(B) "Health Care Requirements" shall mean, relating to the Property, 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 Property or any part thereof as a skilled nursing facility, and all material permits, licenses and authorizations and regulations relating thereto, including all material rules, orders, regulations and decrees of and agreements with health care authorities pertaining to the Property.

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

8. For purposes of any notices to be given to FHA Mortgagee hereunder, the same shall be sent by U.S. certified mail, return receipt requested, postage prepaid, to FHA Mortgagee at the following address:

2100 Ross Avenue, Suite 2500  
Dallas, TX 75201-7907

or to such other address as FHA Mortgagee may hereafter notify Lessee in writing by notice sent to Lessee as aforesaid at Lessee's address at the Property, or such other address as FHA Mortgagee may hereafter be advised of in writing by notice sent to FHA Mortgagee as aforesaid.

9. This Agreement shall remain in full force and effect until the payment in full in cash or cash equivalents of the debt secured by the Mortgage after which this Agreement shall terminate without further action on the part of the parties hereto.

10. 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.

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

12. This Agreement shall, in all respects, be governed by and construed and interpreted in accordance with the laws of the **Utah**.

**[SEE ATTACHED SIGNATURE PAGES]**

SIGNATURE PAGE  
TO  
SUBORDINATION AGREEMENT

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

MORTGAGOR:

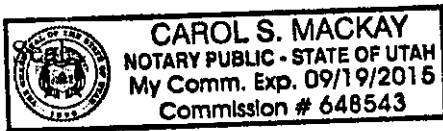
B D & E Properties, L.C.

By: Bryan Erickson  
Name: Bryan Erickson  
Title: Manager

ACKNOWLEDGMENT

STATE OF UTAH )  
COUNTY OF Salt Lake : ss.

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of September, 2013, by Bryan Erickson, the Manager of B D & E Properties, L.C., a Utah limited liability company.



Carol S. Mackay  
NOTARY PUBLIC

SIGNATURE PAGE  
TO  
SUBORDINATION AGREEMENT

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

OPERATOR:

Mountain View Nursing and Rehabilitation, Inc.

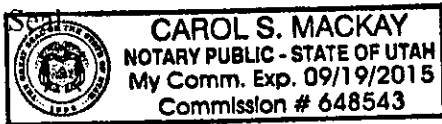
By: C. Todd Bramhall  
Name: Todd Bramhall  
Title: President

ACKNOWLEDGMENT

STATE OF UTAH )  
COUNTY OF Salt Lake ) : ss.

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of September, 2013, by Todd Bramhall, the President of Mountain View Nursing and Rehabilitation, Inc., a Utah corporation.

Carol S. Mackay  
NOTARY PUBLIC



SIGNATURE PAGE  
TO  
SUBORDINATION AGREEMENT

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

FHA MORTGAGEE:

Prudential Huntoon Paige Associates, LLC,  
a Delaware limited liability company

By: [Signature]  
Name: Kate Murray  
Title: Vice President

ACKNOWLEDGMENT

State of Illinois )  
County of Cook )

I, Sarah M Cull a Notary Public, in and for said Cook County, in the State aforesaid, do hereby certify that Kate Murray, personally 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, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said limited liability company, acting as the Vice President of Prudential Huntoon Paige Associates, LLC, a Delaware limited liability company, and as her own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 13 day of September, 2013.

[Signature]  
Signature

(seal)





**EXHIBIT "A"****LEGAL DESCRIPTION****PARCEL A:**

A PARCEL OF LAND LYING IN THE SOUTHWEST 1/4 OF SECTION 10, AND THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, UTAH COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE BRASS CAP MONUMENTING THE SOUTHWEST CORNER OF SAID SECTION 10, THENCE N. 89°31'31" E. A DISTANCE OF 401.83 FEET ALONG THE SECTION LINE; THENCE NORTH A DISTANCE OF 499.67 FEET TO THE REAL POINT OF BEGINNING.

THENCE N. 89°39'14" W. A DISTANCE OF 353.98 FEET TO A POINT OF CURVATURE OF A 18.00-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT; THENCE NORTHEASTERLY A DISTANCE OF 13.30 FEET ALONG THE ARC OF SAID CURVE HAVING A CENTRAL ANGLE OF 42°20'42" AND A CHORD THAT BEARS N. 20°59'49" E. A DISTANCE OF 13.00 FEET; THENCE N. 00°00'01" W. A DISTANCE OF 177.22 FEET TO A POINT OF CURVATURE OF A 5.00-FOOT RADIUS TANGENT CURVE TO THE LEFT; THENCE NORTHWESTERLY A DISTANCE OF 7.85 FEET ALONG THE ARC OF SAID CURVE HAVING A CENTRAL ANGLE OF 89°58'58" AND A CHORD THAT BEARS N. 44°59'36" W. A DISTANCE OF 7.07 FEET; THENCE N.89°59'57" W. A DISTANCE OF 321.45 FEET; THENCE N. 00°01'56" W. A DISTANCE OF 31.00 FEET; THENCE S. 89°59'57" E. A DISTANCE OF 321.29 FEET TO A POINT OF CURVATURE OF A 5.00-FOOT RADIUS TANGENT CURVE TO THE LEFT; THENCE NORTHEASTERLY A DISTANCE OF 7.85 FEET ALONG THE ARC OF SAID CURVE HAVING A CENTRAL ANGLE OF 89°58'58" AND A CHORD THAT BEARS N. 44°59'57" E. A DISTANCE OF 7.07 FEET; THENCE N. 00°00'00" E. A DISTANCE OF 179.69 FEET; THENCE S. 89°42'47" E. A DISTANCE OF 185.00 FEET; THENCE N. 45°00'00" E. A DISTANCE OF 236.73 FEET; THENCE S. 00°17' 13" W. A DISTANCE OF 578.66 FEET TO THE REAL POINT OF BEGINNING.

**PARCEL B:**

RIGHTS TO CONNECT AND USE FACILITIES OF MOUNTAIN VIEW HOUSING LIFT STATION CONTAINED IN THAT CERTAIN JOINT USE AGREEMENT DATED 19 SEPTEMBER 2007, AS AMENDED, BY AND BETWEEN MOUNTAIN VIEW HOSPITAL, INC., A UTAH CORPORATION, GRANTOR, AND BAR K. DEVELOPMENT, LLC, A UTAH LIMITED LIABILITY COMPANY AND B D & E PROPERTIES, L.C., A UTAH LIMITED LIABILITY COMPANY, WHICH JOINT USE AGREEMENT, AS AMENDED, WAS RECORDED ON 16 MAY 2008, AS INSTRUMENT NO. 58332:2008, IN THE OFFICES OF THE UTAH COUNTY RECORDER.

**PARCEL C:**

TOGETHER WITH AND SUBJECT TO AN EASEMENT OVER PROFESSIONAL WAY AS SHOWN ON SPECIAL WARRANTY DEED ENTRY #143812:2007.