

DOC # 785394
06/23/2011 01:05PM Deputy: SG
OFFICIAL RECORD
Requested By:
Western Title Company
Douglas County - NV
Karen Ellison - Recorder
Page: 1 of 15 Fee: \$28.00
BK-611 PG-4864 RPTT: 0.00

The undersigned hereby affirms that this document submitted for recording does not contain any personal information.



Assessor Parcel No(s): 1220-10-610-013

38779-RD

WHEN RECORDED MAIL TO:

Meadows Bank, Loan Administration, 8912 Spanish Ridge Avenue, Suite 100, Las Vegas, NV 89148-1311

SEND TAX NOTICES TO:

H.P. - Gardnerville, L.L.C.; 4605 SE Fernridge Court; Camas, WA 98607-9466

FOR RECORDER'S USE ONLY



#####%1525%06162011%#####

NOTICE: THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE COLLATERAL BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT AND ESTOPPEL CERTIFICATE

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT dated June 16, 2011 ("Agreement"), is made and executed among H.P.- Gardnerville, L.L.C., whose address is 4605 SE Fernridge Court, Camas, WA 98607-9466 ("Landlord"); Evergreen at Gardnerville, L.L.C., whose address is 4601 NE 77th Avenue, Suite 300, Vancouver, WA 98662-6736 ("Tenant"); and Meadows Bank, Spanish Ridge Branch, 8912 Spanish Ridge Avenue, Suite 100, Las Vegas, NV 89148-1311 ("Lender").

SUBORDINATED LEASE. Tenant and Landlord have executed a lease dated October 16, 2008



**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(Continued)**

of the property described herein (the "Lease"). The following information is the summary of the basic terms and conditions of the Subordinated Lease: Lease made by and between H.P. - Gardnerville, L.L.C. as the Landlord and Evergreen at Gardnerville, L.L.C., a Washington limited liability company, who is doing business as Evergreen Gardnerville Health and Rehabilitation Center, as the Tenant, for an initial term of ten (10) years with two (2) additional 5-year options to extend subject to Lease terms and conditions and unless earlier terminated as may be provided for in the Lease.

REAL PROPERTY DESCRIPTION. The Lease covers a 60-bed skilled nursing facility at 1573 Mathias Parkway, Gardnerville, NV 89410-7966 of the following described real property (the "Real Property") located in Douglas County, State of Nevada:

See Exhibit "A", which is attached to this Agreement and made a part of this Agreement as if fully set forth herein.

The Real Property or its address is commonly known as 1573 Mathias Parkway, Gardnerville, NV 89410-7966. The Real Property tax identification number is 1220-10-610-013.

SUPERIOR INDEBTEDNESS. Lender has extended or has agreed to extend the following described financial accommodations to H.P. - Gardnerville, L.L.C., secured by the Real Property (the "Superior Indebtedness"):

Loan in the original principal amount of \$2,800,000.00 evidenced by a promissory note dated on or about June 16, 2011 from Landlord to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

LENDER'S LIEN. The Superior Indebtedness is or will be secured by the Real Property and evidenced by a deed of trust, dated June 16, 2011, from H.P. - Gardnerville, L.L.C. to Lender (the "Lender's Lien") and recorded in Douglas County, State of Nevada as follows:

Lender's Lien will be recorded concurrently herewith.

As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Lease and all of Tenant's rights in the Real Property ("Lease Rights").

REQUESTED FINANCIAL ACCOMMODATIONS. Landlord and Tenant each want Lender to provide financial accommodations to H.P. - Gardnerville, L.L.C. in the form of the Superior Indebtedness. Landlord and Tenant each represent and acknowledge to Lender that Landlord and Tenant will benefit as a result of these financial accommodations from Lender to H.P. - Gardnerville, L.L.C., and Landlord and Tenant acknowledge receipt of valuable consideration for entering into this Agreement.

IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, LENDER, LANDLORD, AND TENANT HEREBY AGREE AS FOLLOWS:

ESTOPPEL CERTIFICATE. Tenant hereby certifies to and agrees with Lender that as of the date of this Agreement, Lender is relying on all of the following certifications and agreements of Tenant as consideration for Lender executing this Agreement:

- (A) The Lease is in full force and effect and is the valid and binding obligation of Tenant,



**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(Continued)**

enforceable in accordance with its terms.

(B) All requirements for the commencement and validity of the Lease have been satisfied.

(C) Neither Tenant nor Landlord is in default under the Lease and no event has occurred and no condition exists, which with the giving of notice, the passage of time, or both, would constitute a default by Tenant or Landlord under the Lease.

(D) There are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease and no claim by Tenant of any nature exists against Landlord under the Lease. All obligations of Landlord have been fully performed.

(E) None of the rent, which Tenant is required to pay under the Lease, has been prepaid, or will in the future be prepaid, more than one month in advance.

(F) The Lease shall not after the date of this Agreement be modified, terminated, or amended, without the prior written consent of Lender for any termination and each such amendment or modification. Any attempted modification, termination, or amendment without the prior written consent of Lender shall be void.

(G) Tenant has not assigned, mortgaged, sublet, encumbered or otherwise transferred any or all of its interest under the Lease and, during the term of the Loan, agrees to not assign, mortgage, sublet, encumber, or otherwise transfer any or all of its interest under the Lease without the prior written consent of Lender.

SUBORDINATION. Notwithstanding anything in the Lease to the contrary, the parties acknowledge and agree that the Lease and Lease Rights are and shall be subject and subordinate in right, interest and lien, and for all purposes, to Lender's Lien, and to all renewals, modifications, consolidations, replacements, and extensions thereof, and to any subsequent lien of the Lender with which Lender's Lien may be spread or consolidated, to the full extent of the principal sum and all other amounts secured thereby and interest thereon. Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender, and its successors and assigns, without the prior written consent of Lender.

NON-DISTURBANCE. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default of the Loan under the Note and/or under Lender's Lien unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or pursuing such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action. If the Lease has not been terminated, then, when Lender succeeds to the interest of Landlord, the Lender shall not terminate or disturb Tenant's possession of Tenant's premises under the Lease, except in accordance with the terms of the Lease and this Agreement.

ATTORNMENT. If Lender shall succeed to the interest of the Landlord under the Lease, and the Lease shall not have expired or been terminated in accordance with the terms of the Lease or this Agreement, Tenant shall, from and after such event, attorn to Lender, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated. Such attornment shall be effective and self-operative without the execution of any further



**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(Continued)**

instrument on the part of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Lender, any instrument or certificate which, in the sole judgment of Lender, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

NO LIABILITY FOR LENDER. Lender in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of annual base rent or additional rent or in the performance of any of the terms, covenants, and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had against Landlord if Lender had not succeeded to the interest of Landlord; provided, however, that Lender shall not be:

- (A) Liable for any act or omission of or any claims against any prior 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 the current month to any prior landlord, including Landlord; or
- (D) Bound by any amendment or modification of the Lease, or waiver of any of its terms, made without its consent; or
- (E) Liable for any sum that any prior landlord, including Landlord, owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Lender; or
- (F) Bound by any surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant; or
- (G) Liable for any construction obligation of any prior landlord, including Landlord; or
- (H) Liable for any breach of representation or warranty of any prior landlord, including Landlord.

NEW LEASE. If Lender shall succeed to the interest of the Landlord under the Lease, upon the written request of Lender to Tenant, Tenant shall execute and deliver to Lender a lease of the Real Property upon the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease existing prior to such transfer.

ACKNOWLEDGMENT AND AGREEMENT BY LANDLORD. Landlord, as landlord under the Lease, acknowledges and agrees for itself and its heirs, successors and assigns to each of the following:

- (A) This Agreement does not in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Note, Lender's Lien or any other documents executed in connection with the Loan.
- (B) In the event of a default under the Note, or any of the other documents executed in connection with the Loan, Landlord hereby consents to Tenant's attornment to Lender and, upon such event, Tenant shall pay all rent and all other sums due under the Lease to Lender



**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT
(Continued)**

as provided in the Lease.

RENT PAYMENTS. Landlord and Tenant acknowledge and agree that during such time as Lender's Lien remains in effect, Tenant shall deliver all monthly rent payments due under the Lease directly to Lender at the following address, or at such other address as may be determined by Lender in writing from time-to-time:

Meadows Bank
Real Estate Lending
Attn: DeAnn Hall, Asst. Vice President
8912 Spanish Ridge Ave., Suite 100
Las Vegas, NV 89148-1311

Unless Superior Indebtedness is in default and past cure periods, upon receipt Lender shall deposit Tenant's rent check in Landlord's bank account ("Deposit Account") designated in the Business Loan Agreement dated on or about June 16, 2011 executed in connection with the Superior Indebtedness. Landlord shall have total discretion over use of the funds in the Deposit Account.

ADDENDUM. An exhibit, titled "Addendum," is attached to this Agreement and by this reference is made a part of this Agreement just as if all the provisions, terms and conditions of the Exhibit had been fully set forth in this Agreement.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Agreement, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Landlord also will pay any court costs, in addition to all other sums provided by law. Fees and expenses shall include attorneys' fees that Lender, Trustee, or both incur, if either or both are made parties to any action to enjoin foreclosure or to any legal proceeding that Landlord institutes. The fees and expenses are secured by this Agreement and are recoverable from the Collateral.



**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(Continued)**

Authority. Any person who signs this Agreement on behalf of Landlord and Tenant represents and warrants that he or she has authority to execute this Agreement.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Counterparts. This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nevada without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Nevada.

Notices. Any notice required to be given under this Agreement shall be given in writing, and, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing among Lender, Landlord, and Tenant shall constitute a waiver of any of Lender's rights or of any of Landlord's and/or Tenant's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors. This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement.

Waive Jury. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

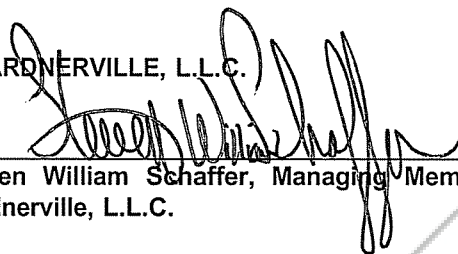


SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(Continued)

EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH PARTY AGREES TO ITS TERMS. THIS AGREEMENT IS DATED JUNE 16, 2011.

LANDLORD:

H.P.- GARDNERVILLE, L.L.C.

By: 
Steven William Schaffer, Managing Member of H.P.-
Gardnerville, L.L.C.

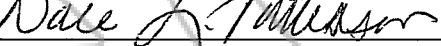
LENDER:

MEADOWS BANK

X 
Steven Haynes, Senior Vice-President

TENANT:

EVERGREEN AT GARDNERVILLE, L.L.C.
By: *EHC Management, L.L.C., Manager*

By: 
~~Dale L. Patterson, Manager of Evergreen at~~
~~Gardnerville, L.L.C. Manager~~

EHC MANAGEMENT, L.L.C., Manager of Evergreen at Gardnerville,
L.L.C.

By: 
Dale L. Patterson, Manager of EHC Management, L.L.C.



SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(Continued)

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF _____)

) SS

COUNTY OF _____)

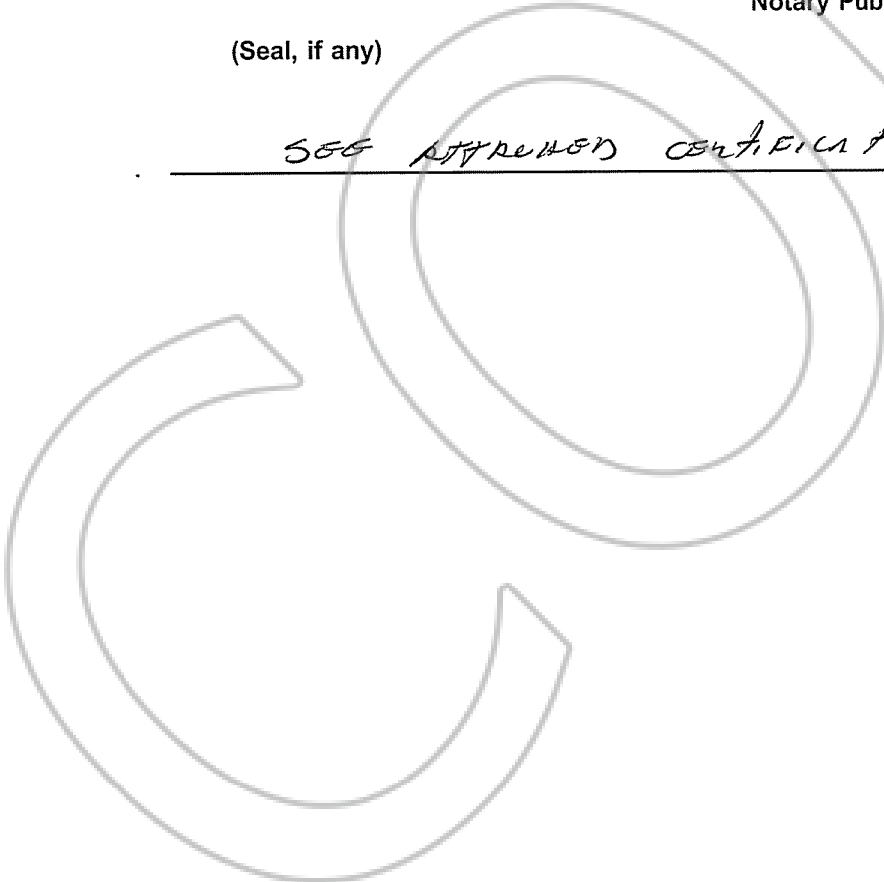
This instrument was acknowledged before me on _____ by **Steven William Schaffer, Managing Member of H.P.- Gardnerville, L.L.C.**, as designated agent of **H.P.- Gardnerville, L.L.C.**.

(Signature of notarial officer)

Notary Public in and for State of _____

(Seal, if any)

SEE ATTACHED CERTIFICATE





CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California
County of Riverside

On JUNE 21, 2011, before me, Martha Mariscal, Notary Public, personally appeared:
STEVEN WILLIAM SCHAFFER

Who proved to me on the basis of satisfactory evidence 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 California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Martha Mariscal
Notary Public

My Commission Expires: Jan 11, 2013

OPTIONAL

DESCRIPTION OF THE ATTACHED DOCUMENT

Title or Type of Document: SUBORDINATION, NON DISTURBANCE AND ATTACHMENT AGREEMENT

Number of Pages: Document Date:

Signer(s) Other Than Named Above: NONE



SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(Continued)

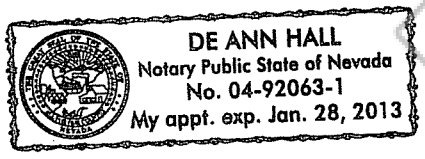
LENDER ACKNOWLEDGMENT

STATE OF Nevada

COUNTY OF Clark

)
) SS
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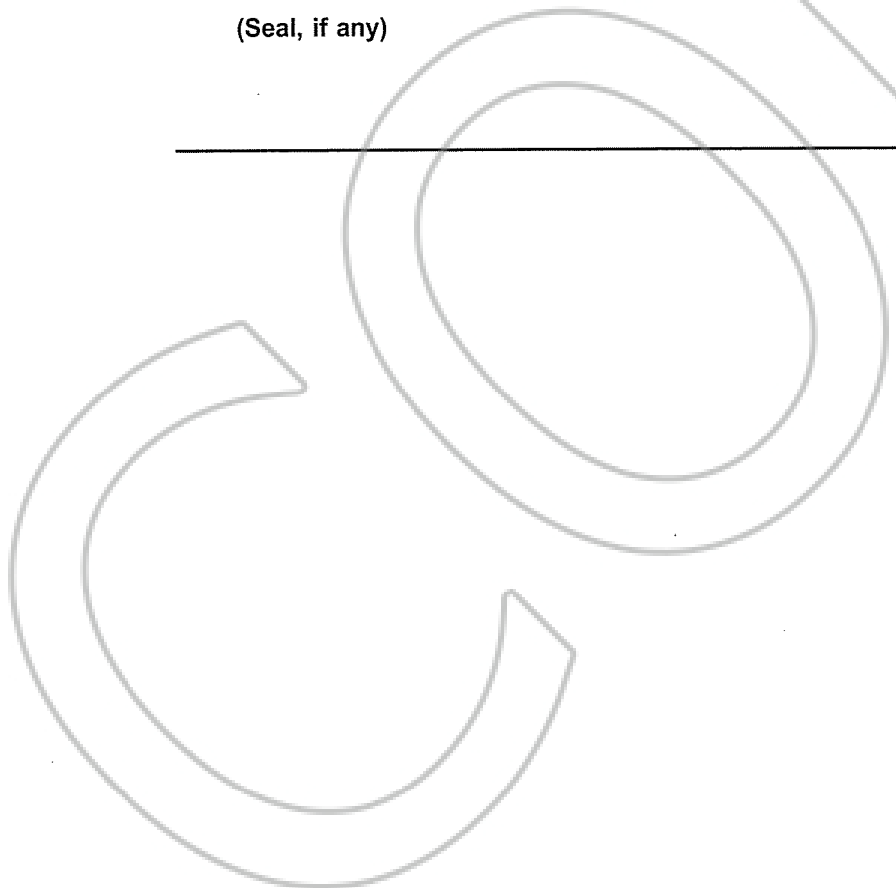
This instrument was acknowledged before me on 6-22-11 by Steven Haynes, Senior Vice President of Meadows Bank, as designated agent of Meadows Bank.



[Signature]
(Signature of notarial officer)

Notary Public in and for State of NV

(Seal, if any)





SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(Continued)

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Washington

)

) SS

COUNTY OF Clark

)

This instrument was acknowledged before me on June 15, 2011 by Dale L. Patterson, Manager of ~~Evergreen at Gardnerville, L.L.C.~~, as designated agent of Evergreen at Gardnerville, L.L.C.. EHC Management, L.L.C.



(Signature of notarial officer)

Notary Public in and for State of Washington



(Seal, if any)



SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
(Continued)

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Washington

)

) SS

COUNTY OF Clark

)

This instrument was acknowledged before me on June 15, 2011 by Dale L. Patterson, Manager of EHC Management, L.L.C., Manager of Evergreen at Gardnerville, L.L.C., as designated agent of Evergreen at Gardnerville, L.L.C..

Patricia L. Groth

(Signature of notarial officer)

Notary Public in and for State of Washington



(Seal, if any)



ADDENDUM

This **ADDENDUM** is attached to and by this reference is made a part of the **Subordination, Non-Disturbance and Attornment Agreement**, dated **June 16, 2011**, and executed in connection with a loan or other financial accommodations between **MEADOWS BANK** and **H.P. - Gardnerville, L.L.C.**

1. On page 3, in the **ESTOPPEL CERTIFICATE** provisions, add the following verbiage as the last sentence of paragraph (F):

Notwithstanding the generality of the foregoing, this section does not affect Tenant's rights under the Lease or under applicable law to terminate the Lease due to Landlord breach or default under the Lease.

2. On page 3, in the **NON-DISTURBANCE** provision, add the following verbiage as the last sentence:

If, after Lender foreclosure and Lender succession to the interest of the Landlord, Lender assigns or transfers its rights to another entity/person, such entity/person will be required to recognize Tenant's rights under the Lease.

3. On page 4, in the **NO LIABILITY FOR LENDER** provisions, strike paragraph (D) in its entirety and replace it with the following:

(D) Bound by any amendment or modification of the Lease or waiver of any of its terms made without its consent, which will not be unreasonably withheld.

4. On page 4, in the **NO LIABILITY FOR LENDER** provisions, strike paragraph (G) in its entirety.

5. On pages 4 and 5, in the **ACKNOWLEDGMENT AND AGREEMENT BY LANDLORD** provisions, strike paragraph (B) in its entirety and replace it with the following:

(B) If an Event of Default occurs and continues under the Note, or any of the other documents executed in connection with the Loan, Landlord hereby consents to Tenant's attornment to Lender and, upon such event, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Lease.

THIS ADDENDUM IS EXECUTED ON JUNE 16, 2011.

LANDLORD:

H.P.- GARDNERVILLE, L.L.C.

By: _____


Steven William Schaffer, Managing Member of H.P.-
Gardnerville, L.L.C.



**ADDENDUM
(Continued)**

LENDER:

MEADOWS BANK

X 
Steven Haynes, Senior Vice President

TENANT:

EVERGREEN AT GARDNERVILLE, L.L.C.

By: ~~EHC Management, L.L.C., Manager~~

By: 
Dale L. Patterson, Manager of ~~Evergreen at
Gardnerville, L.L.C.~~

EHC MANAGEMENT, L.L.C., Manager of Evergreen at Gardnerville,
L.L.C.

By: 
Dale L. Patterson, Manager of EHC Management, L.L.C.



EXHIBIT "A"

All that certain real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of Section 10, Township 12 North, Range 20 East, M.D.B.&M., more particularly described as follows:

COMMENCING at the northeasterly corner of Lot 5, Block "D" as shown on the Final Map for Jewel Commercial Park, Phase 2 filed for record July 24, 1997 in the office of the Recorder, Douglas County, Nevada as Document No. 417846, the southwesterly terminus of Mathias Parkway, the point of beginning; thence along the boundary of said Lot 5, South 29°35'16" West, 237.13 feet; thence North 60°24'44" West, 237.25 feet; thence North 71°18'45" West, 58.86 feet; thence North 11°08'02" West, 343.63 feet to a point on the southerly boundary of Lot 5A as shown on the Record of Survey for Jewel Commercial Park recorded September 19, 1997 in said office of Recorder as Document No. 422092; thence along said boundary of Lot 5A the following courses: North 81°33'55" East, 134.55 feet; North 45°14'39" East, 20.00 feet to a point on the westerly right-of-way of Mathias Parkway; thence along said right-of-way, South 44°45'21" East, 423.56 feet to the point of beginning.

Also described as Parcel 5B of Record of Survey for JEWEL COMMERCIAL PARK (a Commercial Subdivision) HCRI Nevada Properties, Inc., recorded February 26, 2004, Douglas County, Nevada, as Document No. 605686.

NOTE: The above metes and bounds description appeared previously in that certain instrument recorded in the office of the County Recorder of Douglas County, Nevada on October 24, 2008 in Book 1008, Page 3683, as Document No. 731864 of Official Records.

Assessor's Parcel Number(s):
1220-10-610-013