

RETURN TO:
LAWYERS TITLE INSURANCE COMPANY
6363 Poplar Ave. - Suite 108
Memphis, TN 38119
File # 453783 Attn. Phyllis

P BK 93 PG 116

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STATE MS.-DESOTO CO.
FILED

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**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

BK 93 PG 116
W.E. DAVIS CH. CLK.

AGREEMENT made effective as of the 21st day of February _____, 2002, by and among CC DeSoto Clinic, LLC, a Tennessee limited liability company ("**Landlord**"); Campbell Clinic, P.C., a Tennessee corporation ("**Tenant**"); and NATIONAL LIFE INSURANCE COMPANY [*or*] LIFE INSURANCE COMPANY OF THE SOUTHWEST, a Vermont [*or*] Texas corporation ("**Lender**"); all of whom are referred to herein collectively as the "**Parties**."

WITNESSETH:

WHEREAS, Lender has made or is contemplating making a loan (the "**Loan**") to Landlord as evidenced by certain documents and agreements including, *inter alia*, a certain Promissory Note (the "**Note**"); and a Deed of Trust, Assignment of Lease and Security Agreement (the "**Mortgage**") and all renewals, modifications, consolidations, replacements and extensions thereof. The aforementioned documents together with all other instruments or agreements that now or hereafter evidence or secure the Loan are collectively referred to herein as the "**Loan Documents**"; and

WHEREAS, Tenant occupies certain premises (the "**Premises**") located at the property known as Campbell Clinic - DeSoto located at 7545 Airways Blvd., Southaven, DeSoto County, Mississippi (the "**Property**"), under a certain lease with Landlord dated May 24, 2001, and amended _____ (the "**Lease**"); and

WHEREAS, Lender requires, as a condition to the funding of the Loan, that the Lease be subordinated to the lien or charge of the various Loan Documents; and

WHEREAS, Tenant requires that Lender recognize Tenant's rights under the Lease in the event of a foreclosure or other transfer of Landlord's right, title and interest in the Property; and

WHEREAS, Tenant is willing to attorn to Lender or other purchaser at such foreclosure or transfer provided that its rights under the Lease are respected; and

WHEREAS, Landlord, as an inducement to Lender to make the Loan, is willing to enter into the duties and obligations contained in this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The Parties agree that the foregoing recitals are true and correct and incorporated herein by this reference.
2. Subordination. Tenant agrees that the Lease and any extensions, renewals, replacements or modifications thereof and all right, title and interest of Tenant in and to the Premises and the Property are and shall be subject and subordinate to the lien of the Loan Documents including, without limitation, all amendments, renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums and obligations secured thereby with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease. Tenant further acknowledges that, in making disbursements under the Loan Documents, Lender has no obligation or duty to see to the application of such proceeds by the person or persons to whom such proceeds are disbursed by Lender, and any application or use of such proceeds will not defeat the subordination that Tenant makes in this Agreement, in whole or in part.
3. Non-Disturbance. Provided Tenant is not in default in the performance of its obligations under the Lease beyond any applicable grace or cure periods, Tenant's possession and occupancy of the Premises and Tenant's rights and privileges under the Lease shall not be diminished or interfered with by Lender in the exercise of any of its rights under the Loan Documents.
4. Attornment. Lender and Tenant agree that if Lender shall become the owner of the Property by reason of the foreclosure of the Mortgage or the acceptance of a deed in lieu of foreclosure, or otherwise, the Lease shall not be terminated or affected thereby but shall continue in full force and effect upon all of the terms, covenants and conditions set forth therein and Tenant agrees to attorn to Lender or any other purchaser at a foreclosure sale, or their respective successors or assigns, for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option under the Lease, and Tenant does hereby attorn to Lender or such purchaser, successor or assign as its landlord, said attornment to be effective and self operative without the need for execution of any further instrument on the part of any of the parties hereto, immediately upon such succession to the interests of Landlord in the Premises. Tenant agrees, however, upon written demand by Lender or any such purchaser, successor or assign, within fifteen (15) days after such demand, to execute an instrument in confirmation of the foregoing provisions, reasonably satisfactory for such purpose, in which Tenant shall acknowledge such attornment and sets forth the terms and status of its tenancy.
5. Lender's Right to Subordinate Mortgage. Notwithstanding anything to the contrary set forth above, Lender may at any time subordinate the Mortgage to the Lease in whole or in part, without any need to obtain Tenant's consent, by execution of the written documents subordinating the Mortgage to the Lease to the extent set forth in such document and thereupon the Lease shall be deemed prior to the Mortgage to the extent set forth therein and without regard to this Agreement or their respective dates of the execution, delivery or recording. In that event, to the extent to set forth in such document, the Mortgage shall have the same rights with respect

to the Lease as would have existed if the Lease had been executed, and a memorandum thereof recorded prior to the execution, delivery and recording of the Mortgage.

6. Lender's Liability under Lease. Tenant agrees that if Lender or any purchaser, successor or assign shall succeed to the interests of Landlord under the Lease, neither Lender nor such purchaser, successor or assign shall be: (a) liable for Landlord's failure to perform any of its obligations under the Lease which have accrued prior to the date on which Lender shall become the owner of the Property; (b) subject to any offsets, defenses, abatement or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which Lender shall become the owner of the Property; (c) liable for the return of rental security deposits, if any, paid by Tenant to Landlord in accordance with the Lease unless such sums are actually received by Lender; (d) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one month in advance to any prior Landlord unless such sums are actually received by Lender or such prepayment shall have been expressly approved of by Lender; (e) bound by any agreement amending, modifying or terminating the Lease made without Lender's prior written consent; or (f) bound by any assignment of the Lease or sublease of the Premises, or any portion thereof, made without Lender's prior written consent.

7. Assignment of Rents; Notice to Tenant. Tenant acknowledges that Landlord has assigned the Lease to Lender and that Landlord has been granted a license to collect the rent due thereunder. Tenant agrees that anytime it receives notice from Lender requesting that the rent and all other sums due Landlord under the Lease be paid to Lender or its designees, that Tenant hereby agrees to honor such request and will promptly pay such sum directly to Lender or its designee without legal process or the necessity of proof of Landlord's default under the Loan Documents, and Landlord irrevocably consents to Tenant's reliance on such notice from Lender and shall hold Tenant harmless for performance thereunder. Such payment by Tenant will continue until the first to occur of the following: (a) the Lease expires pursuant to its terms and no further amounts are payable by Tenant thereunder; (b) the Lender gives Tenant written notice that the rents and other payments are to be paid to the Landlord; or (c) the Lender gives Tenant written notice that a purchaser has succeeded to the interests of the Landlord and the Lender under the Lease, after which time the rent and all other sums due under the Lease will be paid as directed by such purchaser. Payment of rents to Lender as provided for hereunder shall not be deemed to: (i) cause Lender to succeed to or to assume any obligations or responsibilities of Landlord under the Lease or, (ii) relieve Landlord of any obligations under the Lease.

8. Default by Landlord; Lender's Right to Notice and Opportunity to Cure. So long as any portion of the Loan secured by the Mortgage remains unpaid, Tenant agrees that it will simultaneously send to Lender as set forth below, copies of all notices, which Tenant may serve on the Landlord under the Lease. No notice to Landlord shall be effective against Lender unless a copy is also served on Lender as set forth below. Before the Lease is forfeited or otherwise adversely affected by any default or failure to act on the part of the Landlord, Lender shall have thirty (30) days beyond the time permitted for Landlord to cure a default under the Lease or to commence action to cure such default. During that time period Lender may do anything to prevent the rights of the Landlord from being forfeited or adversely affected unless the default is

of such nature to reasonably require more than thirty (30) days to cure, in which case Lender shall then be permitted such additional time as is reasonably necessary to effect such cure. Notwithstanding the foregoing, Lender's cure period shall continue for such additional time as may be required for Lender to (i) obtain possession and control of the Property, or (ii) obtain the appointment of a receiver and give such receiver a reasonable period of time to cure the default.

9. No Prepayment of Rent or Lease Amendment without Lender's Consent. Landlord and Tenant agree not to make or accept prepayment of rent nor make any amendment of the Lease or other modification of the rights of Landlord and Tenant thereunder and, further, that no person obligated thereunder may be released from liability without the Lender's written consent.

10. Compliance with Laws and Regulations. Tenant agrees to abide by all laws, ordinances, rules and regulations, including those in regard to hazardous materials and toxic substances as provided for by state or federal law.

11. Satisfaction of Obligation to Provide Non Disturbance Agreement. Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

12. Notice. "Notice" means any notice, demand, or other communication or document to be provided under this Agreement or the Lease. All Notices shall be in writing and shall be given to the Party at its address set forth below or such other address as the Party may later specify for that purpose by Notice to the other Party. Each Notice shall, for all purposes, be deemed given and received:

- a. If hand delivered to a Party against receipted copy, when the copy of the Notice is receipted;
- b. If given by a nationally recognized and reputable overnight delivery service, on the day on which the Notice is actually received by the Party at the address of the Party as specified below; or
- c. If given by certified mail, return receipt requested, postage prepaid, two (2) business days after it is posted with the United States Postal Service, at the address of the Party as specified below:

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If to Tenant:

With a copy to:

If to Lender:

National Life Investment Management Co., Inc.
One National Life Drive
Montpelier, VT 05604
Attn: Director of Mortgage Investments
Telecopy No.: (802) 223-9329

With a copy to:

Attn: Mortgage Counsel
(same address)
Telecopy No.: (802) 229-3230

If to Landlord:

With a copy to:

If Notice is tendered under the provisions of this Agreement and is refused by the intended recipient, the Notice shall nonetheless be considered to have been given and shall be effective as of the date provided in this Agreement. The foregoing notwithstanding, any Notice given to a Party in a manner other than that provided in this Agreement and that is actually received by the Party, shall be effective with respect to such Party on the receipt date of the Notice.

13. Definitions. The term "Lender" as used herein shall include the Lender, the successors and assigns of Lender and any other person, party or entity which shall become the owner of the Property by foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term "Landlord" as used herein shall mean and include the present Landlord under the Lease and such Landlord's predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon, the rights and appurtenances thereto, and the estates therein encumbered by the Mortgage.

14. No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by all of the parties hereto.

15. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the state where the Property is located.
16. Inapplicable Provisions; Survival. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.
17. Agreements to Run with Land. This Agreement and the covenants herein contained are intended to run with and bind all land affected hereby.
18. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.
19. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any Party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signers from their obligations hereunder.
20. Anti-Merger. The Lease provides a purchase option to Tenant. In the event Tenant exercises its purchase option and becomes the Owner of the Property, but Lease shall not merge into the fee interest owned by Tenant in the Property, but shall continue as a separate legally enforceable agreement. Tenant acknowledges that the assignment of the Lease by Borrower to Lender is a critical component of Lender's decision to make the Loan. Specifically, Tenant acknowledges that Tenant's liability under the Lease will not be reduced, modified, compromised or otherwise affected by Tenant's purchase of the Property, but that such Lease shall continue as a separate, legally enforceable obligation. If for any reason, including the purchase of the Property by Tenant, the Lease is merged out of existence or is otherwise affected, by operation of law or otherwise, so that it is not a legally enforceable agreement due to the purchase of the Property by Tenant, Tenant and Landlord agree that Lender may accelerate the indebtedness due under the Loan.
21. Loan Assumption. The Lease provides a purchase right to Tenant to acquire the Property. Further, the Operating Agreement for Landlord (of which Tenant is a member) provides a purchase right to Tenant of the remaining member interest in Landlord. Tenant acknowledges that either the purchase of the Property by Tenant or the purchase by Tenant of all of the membership interest of Landlord will be a prohibited transfer under the Loan and that without the prior approval of Lender and compliance with the provisions in the Loan Documents regarding transfer and assumption of the Loan (including the payment of a transfer fee and Lender's expenses relating to transfer and assignment), Landlord may accelerate the maturity of the Loan.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

LANDLORD:

CC DESOTO CLINIC, LLC, a Tennessee limited liability company

By: *Alan W. McKinney*

STATE OF TENNESSEE

COUNTY OF DAVIDSON

PERSONALLY came and appeared before me, the undersigned authority in and for the said county and state, on this 15th day of February, 2002, within my jurisdiction, the within named **ALAN W. MCKINNEY**, whose address is 2636 Elm Hill Pike, Suite 200, Nashville, Tennessee 37214, acknowledged that he is Chief Manager of the within **CC DESOTO, LLC, a Tennessee limited liability company**, and that for and on behalf of said company, and as its act and deed, he executed and delivered the above and foregoing instrument, after first having been duly authorized by said company so to do.

Sandra L. Bair
Notary Public

My Commission Expires:

~~My Commission Expires NOV 30, 2002~~

11/30/02



TENANT:

CAMPBELL CLINIC, P.C., a Tennessee corporation

By: [Signature]
Title: _____

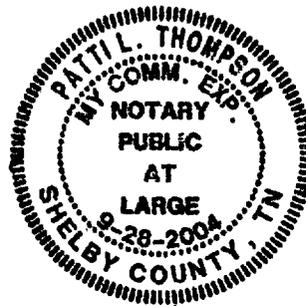
STATE OF Tennessee

COUNTY OF Shelby

PERSONALLY came and appeared before me, the undersigned authority in and for the said county and state, on this 19th day of February, 2002, within my jurisdiction, the within named John M. Vines, whose address is Campbell Clinic, 1400 S. Germantown Rd Germantown Tennessee, 38138, acknowledged that he is CEO of the within **CAMPBELL CLINIC, P.C., a Tennessee corporation**, and that for and on behalf of said corporation, and as its act and deed, he executed and delivered the above and foregoing instrument, after first having been duly authorized by said company so to do.

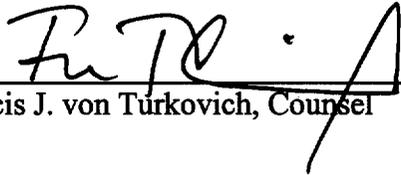
Patti L. Thompson
Notary Public

My Commission Expires:
9/28/2004



LENDER

NATIONAL LIFE INSURANCE COMPANY,
a Vermont corporation

BY: 
Francis J. von Turkovich, Counsel

STATE OF VERMONT

COUNTY OF WASHINGTON

PERSONALLY came and appeared before me, the undersigned authority in and for the said county and state, on this 15th day of February, 2002, within my jurisdiction, the within named **FRANCIS J. von TURKOVICH** whose address is One National Life Drive, Montpelier, Vermont 05604, acknowledged that he is Counsel of the within **NATIONAL LIFE INSURANCE COMPANY, a Vermont corporation**, and that for and on behalf of said company and as his act and deed, he executed and delivered the above and foregoing instrument, after first having been duly authorized by said company so to do.




Notary Public