BK 1575 PG 0149

P BOOK 0095 PAGE 0762

STATE MS.-DESOTO CO.
FILED

OCT 2 3 44 PM '02

BK 1575 PG 149
W.E. DAVIS CH. CLK.

STATE MS.-DESOTO CO.
FILED

OCT 2 3 45 PM '02

P BK 95 PG 762
W.E. DAVIS CH. CLK.

Landmark DeSoto
Desoto County, Mississippi

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:
Julia H. Terry, Esq.
McGlinchey Stafford, PLLC
643 Magazine Street
New Orleans, Louisiana 70130-3447
(504)586-1200

To the Chancery Clerk of DeSoto County, Mississippi:
The real property described herein is situated part of Southwest Quarter of the Southeast Quarter of Section 33, Township 1 South, Range 8 West, DeSoto County, Mississippi.

ESTOPPEL, CONSENT AND SUBORDINATION AGREEMENT

THIS ESTOPPEL, CONSENT AND SUBORDINATION AGREEMENT (this ("Agreement"), is entered into effective as of the 21st day of August, 2002, by and between **DESOTO COMMUNITY CARE CENTER, LLC**, a Mississippi limited liability company ("Tenant"), whose address is 197 E. Oakridge Park, Metairie, Louisiana, 70005, and **MISSISSIPPI EXTENDED CARE CENTERS, INC.**, a Mississippi corporation, whose address is 763 Avery Boulevard North, Ridgeland, MS 39157 ("Landlord"), for the benefit of **BANK ONE, NA**, with its main office in Chicago, Illinois, a national banking association, successor by merger to Bank One, Louisiana, National Association whose address is 451 Florida Boulevard, Baton Rouge, Louisiana 70801 ("Lender").

WHEREAS, Landlord is the owner of certain real property situated in the County of DeSoto, State of Mississippi, being more particularly described on **Exhibit A** attached hereto (said property, together with any buildings, fixtures and other improvements thereon, the "Property"); and

WHEREAS, pursuant to a loan agreement dated October 2, 2000, by and between Landlord and Lender, Lender agreed to make a loan to Landlord in the amount of TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($2,500,000.00) (the "MECC Loan"), as evidenced by that certain Promissory Note dated October 2, 2000, made by the Landlord to the order of the Lender, in the principal amount of the Loan and being due and payable in full on October 1, 2002, which note was amended on December 1, 2001, to reflect, *inter alia*, a reduction in the principal amount thereof and an extension of the maturity date to January 1, 2007 (collectively, the "MECC Note"); and

WHEREAS, the MECC Note is secured by a deed of trust, dated October 2, 2000, granted by the Landlord for the benefit of the Lender and recorded in Book 1256 at Page 577 in

the office of the Chancery Clerk of DeSoto County, Mississippi, which deed of trust was extended by that certain Extension Agreement dated December 31, 2001, executed by and between Landlord and Lender, recorded in Book 1446 at Page 332 in the office of the Chancery Clerk of DeSoto County, Mississippi (collectively, the "MECC Deed of Trust"), which MECC Deed of Trust is now a lien on the Property; and

WHEREAS, on May 23, 2002, Landlord leased the Property to Tenant pursuant to the terms and conditions of that certain lease dated May 23, 2002, which lease is on file and of record in Book 94 at Page 346 in the office of the Chancery Clerk of DeSoto County, Mississippi (said lease, as the same may be amended from time to time, is hereinafter referred to as the "Property Lease"); and

WHEREAS, in addition to the MECC Loan, Lender has made other loans to affiliates of Landlord, namely, Community Extended Care Centers, Inc., a Mississippi corporation ("CECC") and Louisiana Extended Care Centers, Inc., a Louisiana corporation ("LECC") (which loans, together with the MECC Loan, are hereinafter referred to collectively as the "Affiliate Loans"); and

WHEREAS, on even date herewith, Lender, Landlord, CECC, and LECC agreed to consolidate the Affiliate Loans into a single loan (the "Consolidation Loan") in favor of Landlord, CECC, and LECC, as co-borrowers (the "Consolidation Borrowers"), in the amount of TWENTY-FOUR MILLION EIGHT HUNDRED TWENTY-FOUR THOUSAND NINE HUNDRED ONE AND 62/100 DOLLARS ($24,824,901.62), pursuant to the terms and conditions of that certain amended and restated loan agreement (the "Consolidation Loan Agreement") dated of even date herewith, by and between Lender and the Consolidation Borrowers, as evidenced by that certain promissory note (the "Consolidation Note") of even date therewith, made by the Consolidation Borrowers to the order of Lender, in the principal amount of the Consolidation Loan, and being due and payable on August 21, 2005, which Consolidation Loan amount represents the total outstanding principal and interest due under the Affiliate Loans as of the date hereof; and

WHEREAS, on even date herewith, Landlord and Lender have amended the MECC Deed of Trust to secure the indebtedness evidenced by the Consolidation Note, which amendment has or will be filed of record in the land records of the Chancery Clerk of DeSoto County, Mississippi (said amendment, together with the MECC Deed of Trust, is hereinafter referred to as the "Deed of Trust"); and

WHEREAS, on even date herewith, as further security for the repayment of the Consolidation Loan, Landlord and Tenant have assigned their interest in certain leases and subleases affecting the Property, including the Property Lease, to Lender in that certain Assignment of Leases and Rents of even date herewith, to be filed of record in the land records of the Chancery Clerk of DeSoto County, Mississippi (the "Assignment of Leases"); and

WHEREAS, in connection with the Consolidation Loan, Lender will require the execution of various mortgages, pledges, deeds of trust, assignments, security agreements, amendments, guaranties, and certificates (said documents, including this Agreement, the Consolidation Note, the Consolidation Loan Agreement, the Deed of Trust, the Assignment of Leases, and any other documents, whether now or hereafter existing, executed in connection with the Consolidation Loan, together with any extensions, modifications and renewals thereof, are hereinafter collectively referred to as the "Consolidation Loan Documents"); and

WHEREAS, as a condition precedent to the Consolidation Loan, Lender has required Landlord and Tenant to execute this Agreement,

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, Landlord and Tenant agree as follows:

1. Certifications by Landlord and Tenant. Landlord and Tenant each hereby certify to Lender as follows:

1.1 The Property Lease is in full force and effect, Tenant is presently occupying the Premises pursuant thereto, and neither Landlord nor Tenant has transferred its interests in the Property Lease or agreed to do so.

1.2 No rent or other amount has been prepaid under the Property Lease.

1.3 No deposit of any nature has been made in connection with the Property Lease (other than deposits the nature and amount of which are expressly described in the Property Lease).

1.4 Tenant is currently paying rent under the Property Lease in an amount equal to ninety-five (95%) percent of the Net Cash Flow from the operation of the nursing home facility determined pursuant to a formula in the Lease.

1.5 Tenant claims no rights with respect to the Property other than those set forth in the Property Lease.

1.6 To the best of Tenant's knowledge, there is no existing defense or offset against amounts due or to become due to Landlord under the Property Lease, and there is no existing uncured default by Tenant or Landlord under the Property Lease, nor has any event occurred which, with the passage of time or the giving of notice or both, would constitute such a default.

1.7 To the best of Landlord's knowledge, there is no existing defense or offset against amounts due or to become due to Landlord under the Property Lease, and there is no existing

uncured default by Tenant or Landlord under the Property Lease, nor has any event occurred which, with the passage of time or the giving of notice or both, would constitute such a default.

1.8 Landlord has performed all of its obligations to Tenant with respect to the construction of improvements; Landlord has offered no free rent period, building allowance or similar concession(s) to induce Tenant to enter into the Property Lease except as set forth in the Property Lease; and Landlord has no other obligations to Tenant in connection with the Property Lease, matured or not yet matured, except as set forth in the Property Lease.

1.9 Except as otherwise set forth in the Property Lease or provided by law, there is no condition or event that would prevent the Property Lease from becoming effective or would entitle Landlord or Tenant to terminate the Property Lease.

2. Consent to Assignment. Tenant understands that Landlord has assigned or will assign the Property Lease to Lender in connection with the Consolidation Loan, and Tenant hereby consents to such assignment. Tenant is not aware of any prior assignment of the Property Lease by Landlord.

3. No Modification of Property Lease. Tenant shall not, without Lender's prior written consent, (a) amend, supplement, terminate or otherwise modify the Property Lease; or (b) accept (and/or act in reliance on) the release, relinquishment or waiver by Landlord of any right, or the grant by Landlord of any approval or consent, with respect to the Property Lease. Any such termination, modification, acceptance or other action taken without such prior consent shall, at Lender's option, be void. Tenant shall not pay any rent or other amount due to Landlord under the Property Lease more than 10 days in advance of the due date.

4. Lender Cure Rights. Tenant shall not exercise any termination remedy upon a default by Landlord with respect to the Property Lease unless Tenant has first given Lender written notice of such default (at the address shown below or any other address hereafter supplied to Tenant by Lender) and such default is not cured within 30 days thereafter; provided that, if such default is no monetary, is curable by Lender, and (a) is of such a nature that it cannot reasonably be cured within 30 days or (b) the cure thereof by Lender requires Lender to have possession of the Property, then in either such event Tenant shall not exercise any termination remedy so long as Lender is diligently taking all steps required for Lender to cure the default (including pursuit of possession of the Property, to the extent required).

5. Payments to Lender. Tenant shall make all payments under the Property Lease to Lender upon receiving a direction to pay from Lender, and shall comply with any such direction to pay without determining whether any default exists with respect to the Loan.

6. Agreements by Landlord. Landlord hereby agrees as follows:

6.1 Tenant shall have no liability to Landlord for any amount otherwise owing to Landlord under the Property Lease in the event that (a) Tenant receives a written demand from Lender to pay such amount to Lender and (b) Tenant thereafter pays such amount to Lender.

6.2 Tenant shall be entitled to assume that any such demand by Lender is valid and shall be under no obligation, and shall have no right, to inquire as to its validity, nor shall any claim by Landlord that such demand is invalid affect Tenant's right and obligation to pay all amounts demanded to Lender and thereupon be discharged of Tenant's obligation to pay such amounts to Landlord.

7. Subordination. All of Tenant's rights and interests with respect to the Property under the Property Lease and all related documents (including without limitation any options to purchase and rights of first offer and first refusal) are and shall remain subject and subordinate to Lender's rights and interests in the Property under the Consolidation Loan Documents including but not limited to, the Deed of Trust, and to any and all advances made thereunder, and to all amendments, substitutions, extensions, renewals, supplements and other modifications now or hereafter executed with respect thereto, including without limitation modifications that substantially increase the obligations to Lender to which Tenant's interests are subordinated, said subordination to be with the same effect as though the Consolidation Loan Documents and any and all such renewals, modifications, amendments, consolidations, replacements and extensions thereto, had been executed, acknowledged, delivered and recorded and all advances thereunder had been made, prior to the execution, acknowledgement, delivery and recording of the Property Lease, and any notice therewith. Without limiting the generality of the foregoing, the provisions of the above-described loan and security documents shall prevail over any inconsistent provisions of the Property Lease relating to the disposition of insurance and condemnation awards.

8. Termination. In the event of any judicial or nonjudicial foreclosure of the Deed of Trust, the Property Lease shall be deemed terminated automatically, the transferee of Landlord's interests pursuant to such foreclosure shall have no liability to the Tenant, and the Tenant shall immediately vacate and surrender the Property in good condition and in accordance with all requirements of the Property Lease regarding the condition of the Property upon surrender by the Tenant of the Property.

9. Further Assurances. Each party hereto shall execute, acknowledge and deliver to each other party all documents, and shall take all actions, reasonably required by such other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Agreement.

10. Miscellaneous. Tenant and Landlord hereby agree to the provisions set forth in the Assignment of Leases and Landlord and Tenant hereby agree that capitalized terms used and not defined in this Agreement shall have the meanings given to them in the Assignment of Leases. Without limitation on the generality of the forgoing, (a) all notices, demands and other communications in connection with this Agreement shall be given in accordance with the notice section of the Assignment of Leases, and (b) Tenant agrees that the sections in the Assignment of Leases regarding Lender's rights in the event of a default or an Event of Default shall control with respect to any dispute in connection with this Agreement, the Property Lease or the Property. This Agreement is a Loan Document as said term is defined under the Deed of Trust. This Agreement shall be binding on Tenant and its successors and assigns and shall inure to the benefit of Lender and its successors and assigns; provided, however, that in no event may Tenant assign any of its rights or obligations under this Agreement (and any attempt by Tenant to do so shall, at Lender's option, be void). Tenant agrees to pay to Lender, on demand, all costs and expenses, including attorneys' fees, incurred by Lender in exercising any right, power or remedy conferred by this Agreement, or in the enforcement of this Agreement, whether or not any action is filed in connection therewith. Until paid to Lender, such amounts shall bear interest, commencing with Lender's demand therefore, at the default rate of interest set forth in the Consolidation Note or, if there is no such default rate, at the highest rate of interest set forth in the Consolidation Note. If more than one person and/or entity signs this Agreement as the tenant, then such person(s) and/or entity(ies) shall be jointly and severally liable for the obligations of the tenant under this Agreement.

11. Reliance by Lender. Tenant understands that Lender will rely upon this Agreement in making the Loan and/or in entering into certain agreements and/or granting certain consents in connection therewith. Notice of acceptance of this Agreement by Lender is waived.

12. Notices. Notices shall be given in the manner set forth in the Assignment of Leases to the following addresses:

If to Landlord:
Mississippi Extended Care Centers, Inc.
763 Avery Boulevard North
Ridgeland, Mississippi 39157
Attn: Ms. Hibernia Dyess
Facsimile: (601) 967-7055

If to Lender:
Bank One, NA
451 Florida Boulevard
Baton Rouge, Louisiana 70801
Attn: Michael A. Blue
Facsimile: (225) 332-7216

With a copy to: Julia H. Terry, Esq.
McGlinchey Stafford, PLLC
643 Magazine Street
New Orleans, Louisiana 70130
Facsimile: (504) 596-2800

If to Tenant: DeSoto Community Care Center, LLC
197 E. Oakridge Park
Metairie, Louisiana 70005
Attn: John A. Stassi, II, Manager
Facsimile: (504) 561-5743

13. Counterparts. This Agreement may be executed in any number of counterparts which, when taken together as a whole, shall constitute a single instrument.

IN WITNESS WHEREOF, Tenant and Landlord have executed this Agreement on the day and year set forth below, to be effective as of the day and year first above written.

DESOTO COMMUNITY CARE CENTER, LLC

By: _____
John A. Stassi, II, Manager
Date: August 26, 2002

MISSISSIPPI EXTENDED CARE CENTERS, INC.

By: _____
David W. Stallard, Chief Executive Officer
Date: 8/26/02

ACKNOWLEDGEMENT

STATE OF LOUISIANA

PARISH OF ORLEANS

Personally appeared before me, the undersigned authority in and for the said Parish and State, on this 26th day of August, 2002, within my jurisdiction, the within named John A Stassi, II, who acknowledged that he is the manager of DeSoto Community Care Center, LLC, a Mississippi limited liability company and that for an on behalf of said limited liability company, and as its act and deed, he executed the above and foregoing instrument, after first having been duly authorized by said limited liability company so to do.

NOTARY PUBLIC

Christopher Michael Wappel, Notary Public
State of Louisiana
My commission is issued for life

My Commission is good for Life:

[AFFIX NOTARIAL SEAL]

ACKNOWLEDGEMENT

STATE OF LOUISIANA

PARISH OF ORLEANS

Personally appeared before me, the undersigned authority in and for the said Parish and State, on this 26th day of August, 2002, within my jurisdiction, the within named David W. Stallard, who acknowledged that he is Chief Executive Officer of Mississippi Extended Care Centers, Inc., a Mississippi corporation, and that for and on behalf of the said corporation, and as its act and deed, he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

NOTARY PUBLIC

Christopher Michael Wappel, Notary Public
State of Louisiana
My commission is issued for life

My Commission is good for Life:

[AFFIX NOTARIAL SEAL]

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

PART OF SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33,
T-1-S, R-8-W, DESOTO COUNTY, MISSISSIPPI
MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

Commencing at the Southeast Corner of the Southeast Quarter of the Southeast Quarter of said Section, said point being the intersection of the Centerline of Nail Road and Tulane Road;

Thence West a distance of 190.10 feet;

Thence North a distance of 39.22 feet to the North Right-of-Way line of said Nail Road and to the Point of Beginning;

Thence South 89°51'30" West along said North Right-of-Way line a distance of 485.24 feet;

Thence North 00°08'30" West a distance of 49.37 feet;

Thence North 25°16'00" East a distance of 947.30 feet;

Thence North 67°41'49" East a distance of 80.82 feet to the West Right-of-Way line of Tulane Road, said point being a Curve;

Thence Southerly along said Right-of-Way line of Tulane Road, a Curve to the Right, having a Delta of 17°08'32", a Radius of 2251.83 feet, a Chord of South 12°51'39" East 671.22 feet;

Thence South 85°40'51" West a distance of 150.00 feet;

Thence along a Curve to the Right having a Delta of 04°10'39", a Radius of 2101.83 feet, a Chord of South 02°17'40" East 153.21 feet;

Thence South 00°08'30" East a distance of 116.75 feet to the Point of Beginning and containing 7.45 acres.