

When recorded return to:
Baysh Farley
First Federal Savings and Loan Assoc of Port
Angeles
105 W 8th St, PO Box 351
Port Angeles, WA 98362



201806290124

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Skagit County Auditor

Filed for record at the request of:

Fidelity National Title

COMPANY OF WASHINGTON, INC.

5006 Center Street, Suite J
Tacoma, WA 98409-2314

Escrow No.: 611183059

CHICAGO TITLE CO.
620034299

DOCUMENT TITLE(S)

Subordination, Non-Disturbance and Attornment Agreement

MORTGAGEE(S)

First Federal Savings & Loan Association of Port Angeles

TENANT(S)

Total Renal Care, Inc.

Landlord:
RJ Properties, LLC

LEGAL DESCRIPTION

Lot 3, Burlington Binding Site Plan No. 2-97, approved July 14, 1997, recorded December 18, 1997, under Auditor's File No. 9712180060, filed in Volume 13 of Short Plats, pages 67 and 68, being a portion of the Southwest Quarter of the Southwest Quarter of Section 5, Township 34 North, Range 4 East of the Willamette Meridian.

Situated in Skagit County, Washington.

TAX PARCEL NUMBER(S)

P112833 / 8018-000-003-0000

Reference NO.: Unrecorded lease and 201806290122

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of June 29, 2018 (the "Effective Date"), between **First Federal Savings & Loan Association of Port Angeles** (the "Mortgagee"), and **Total Renal Care, Inc.** (the "Tenant").

WHEREAS, by Lease dated November 16, 2011 (hereinafter called the "Lease"), **RJ PROPERTIES, LLC, SUCCESSOR-IN-INTEREST TO CAMELOT PROPERTIES, LLC, SUCCESSOR-IN-INTEREST TO HIGHWAY 9 OFFICE PARK CENTER, LLC** (hereinafter called "Landlord") has leased to Tenant and Tenant has rented from Landlord the approximately 5,600 rentable square feet of leased premises ("Tenant's Premises") located at 145 Cascade Place, Suites 100-103, Burlington, WA 98233 as more fully described in Exhibit A attached hereto and incorporated by reference (such real property, including all buildings, improvements, structures and fixtures located thereon, "Landlord's Premises").

WHEREAS, Mortgagee has made a loan to Landlord in the original principal amount of \$2,590,000.00 (the "Loan"); and

WHEREAS, To secure the Loan, Landlord has encumbered Landlord's Premises by entering into that certain Deed of Trust dated June 29, 2018, in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated or otherwise changed from time to time, the "Mortgage") recorded on June 29, 2018, under Clerk's File No. 201806290124 in the Official Public Records of Real Property of the County of Skagit, State of Washington.

WHEREAS, Tenant desires that Mortgagee recognize Tenant's rights under the Lease in the event of foreclosure of Mortgagee's lien, and Tenant is willing to agree to attorn to the purchaser at such foreclosure if Mortgagee will recognize Tenant's right of possession under the Lease.

NOW, THEREFORE, for and in consideration of their respective covenants herein made and the receipt of other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.**

The following terms shall have the following meanings for purposes of this Agreement.

1.1 *Foreclosure Event.* A "Foreclosure Event" means: (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable Law, including bankruptcy Law) as holder of the Loan and/or the Mortgage, as a result of which Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

1.2 *Former Landlord.* A "Former Landlord" means Landlord and any other party that was a landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.3 *Offset Right.* An "Offset Right" means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord's breach or default under the Lease.

1.4 *Rent.* The "Rent" means any fixed rent, base rent or additional rent under the Lease.

1.5 *Successor Landlord.* A "Successor Landlord" means any party that becomes owner of Landlord's Premises as the result of a Foreclosure Event.

1.6 *Termination Right.* A "Termination Right" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

2. **Subordination.**

The Lease shall be, and shall at all times remain, subject and subordinate to the lien of the Mortgage, and all advances made under the Mortgage.

3. **Non-disturbance, Recognition and Attornment.**

3.1 *No Exercise of Mortgage Remedies Against Tenant.* So long as the Lease has not been terminated on account of Tenant's default (an "Event of Default"), Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee 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 Mortgagee joins Tenant in such action, Landlord, by executing the Consent hereinafter set forth, agrees to indemnify, defend and hold Tenant harmless from and against any loss, cost or expense incurred or suffered by Tenant, including without limitation, legal fees, in being a party to or arising from such action, which indemnity shall survive termination or expiration of this Agreement.

3.2 *Non-disturbance and Attornment.* If the Lease has not been terminated on account of an Event of Default by Tenant, then, when Successor Landlord takes title to Landlord's Premises: (a) Successor Landlord shall not terminate or disturb Tenant's possession or quiet enjoyment of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and

attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

3.3 *Further Documentation.* The provisions of Section 3 shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of Section 3 in writing upon request by either of them.

3.4 *Consent to Lease.* Mortgagee hereby consents to the Lease and all of the terms and conditions thereof.

4. **Protection of Successor Landlord.**

Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 *Claims Against Former Landlord.* Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment unless and to the extent that Mortgagee was furnished notice and opportunity to cure the same. (The foregoing shall not limit Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of attornment, if any).

4.2 *Prepayments.* Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.

4.3 *Payment; Security Deposit.* Any obligation: (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee.

4.4 *Lease.* Tenant hereby covenants and agrees that, so long as the Mortgage remains in force and effect:

(a) No Modification, Termination or Cancellation. Tenant shall not consent to any material modification, termination or cancellation of the Lease without Mortgagee's prior written consent, which consent shall not be unreasonably withheld and shall be deemed given if Mortgagee fails to respond in writing within 15 days following receipt of written notice.

(b) Notice of Default. Tenant shall notify Mortgagee in writing concurrently with any notice given to Landlord of any breach of or default by Landlord under the Lease. Tenant agrees that Mortgagee shall have the right (but not the obligation) to cure any

breach or default specified in such notice within the time period set forth in the Lease for Landlord's performance.

- (c) Assignment of Rents. Upon receipt by Tenant of written notice from Mortgagee that Mortgagee has elected to terminate the license granted to Landlord to collect rents, as provided in the Mortgage, and directing Tenant to make payment thereof to Mortgagee, Tenant shall not be required to determine whether Landlord is in default under any obligations to Mortgagee before complying with such direction and shall not be liable to Landlord for failure to pay Landlord any sums that are paid instead to Mortgagee.

5. Miscellaneous.

5.1 *Notices*. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Notices shall be effective the next business day after being sent by overnight courier service, and three (3) business days after being sent by certified mail (return receipt requested). Unless and until notice of a change of address is given under this Agreement, notices or other communications shall be given to Mortgagee and Tenant, respectively, at the following address:

Mortgagee: First Federal Savings & Loan Association of Port Angeles
P.O. Box 351
Port Angeles, WA 98362

Landlord: RJ Properties, LLC
19016 NE 127th St.
Redmond, WA 98052

Tenant: Total Renal Care, Inc.
c/o DaVita Inc.
Attention: Real Estate Legal
2000 16th Street
Denver, CO 80202

With a copy to: relegal@davita.com
Subject: Burlington, WA (11300)

5.2 *Successors and Assigns*. This Agreement shall bind and benefit the parties their successors and assigns, any Successor Landlord, and its successors and assigns.

5.3 *Entire Agreement*. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

5.4 *Interaction with Lease and with Mortgage*. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties to this Agreement and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement

supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of non-disturbance agreements by the holder of the Mortgage. Mortgagee confirms that Mortgagee has consented to Landlord's entering into the Lease.

5.5 *Interpretation; Governing Law.* The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State where the Premises is located, including its principles of conflict of laws.

5.6 *Amendments.* This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by all parties to this Agreement.

5.7 *Execution.* This Agreement may be executed electronically and in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

5.8 *Representations.* Each party represents that it has full authority to enter into this Agreement and that those signatories executing this Agreement on its behalf have full power and authority to executed this Agreement. Mortgagee agrees to keep a copy of this Agreement in its permanent mortgage records with respect to the Loan. This Agreement shall be null and void unless Tenant receives a fully executed original counterpart hereof on or before the sixtieth (60th) day following the date of Tenant's execution.

5.9 *Recordation.* Upon full execution, this Agreement may be recorded in the real property records of the county in which the Premises is located by either party hereto, provided that the recording party delivers to the other party a copy of the recorded document. The recording party shall be responsible for the costs of recording this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, this Agreement has been duly executed by Mortgagee and Tenant as of the date(s) set forth below.

TENANT:

Total Renal Care, Inc.,
A California corporation

By: [Signature]
Name: JASON MOILANEN
Title: Assistant General Counsel
Address: 2000 16th Street, Denver, Colorado 80202
Date: 6/25/2018

STATE OF COLORADO)
) SS
COUNTY OF DENVER)

I, Christen Nicole Jackson, a Notary Public in and for the County and State aforesaid, do hereby certify that Jason Moilanen, the Assistant General Counsel of Total Renal Care, Inc., a California corporation who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 25th day of June, 2018

[Signature]
Notary Public

My Commission Expires: 6-24-2021

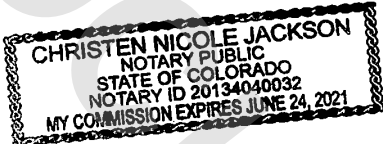


Exhibit A to
Subordination, Attornment and Non-Disturbance Agreement

Landlord's Premises

Lot 3, BURLINGTON BINDING SITE PLAN NO. 2-97, approved July 14, 1997, recorded December 18, 1997, under Auditor's File No. 9712180060, filed in Volume 13 of Short Plats, pages 67 and 68, being a portion of the Southwest Quarter of the Southwest Quarter of Section 5, Township 34 North, Range 4 East of the Willamette Meridian.

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