

Julia R. Rietz
State's Attorney

Matthew P. Banach
Chief of the Civil Division
email: mbanach@champaigncountyil.gov



Courthouse
101 East Main Street
Urbana, Illinois 61801
Phone (217) 384-3733
Fax (217) 384-3816

**Office of
State's Attorney
Champaign County, Illinois**

July 16th, 2024

TO: Champaign County Board Members
CC: County Executive Steve Summers
RE: Addendum Packet materials for the Board's 7/18/24 meeting (revised agreement)

Dear esteemed members of the Champaign County Board,

This letter is to explain why the board is receiving addendum packet materials including a revised final draft of the 'Deed Restriction Release Agreement' regarding the property at 500 South Art Bartell Road, Urbana (the former nursing home property).

Specifically: after the board packet materials went out at the end of last week, counsel for M&T Bank (who have been working with our counsel to draft these documents) noticed that an access easement from Art Bartell Road to the lot had not yet been addressed. Counsel promptly brought that to the County's attention, and the attorneys fixed the oversight. A revised draft of the Agreement is now forwarded to your attention, along with a 'redline' version which will make it easier to see the changes.

The revised Deed Restriction Release Agreement has been approved by the County's attorneys (Polsinelli) and is ready for your review.

This letter is suitable for inclusion in the publicly-posted board packet addendum.

Sincerely,

Matthew P. Banach
Chief of the Civil Division
Champaign County State's Attorney's Office

DEED RESTRICTION RELEASE AGREEMENT

This **DEED RESTRICTION RELEASE AGREEMENT** (this “Agreement”) is made and entered into as of July [__], 2024, by and between Manufacturers and Traders Trust Company (“M&T Bank”), a New York banking corporation, and The County of Champaign, Illinois, a public body corporate and politic of the State of Illinois (the “County”). M&T Bank and County are each referred to herein as “Party”, and collectively referred to as the “Parties.”

WHEREAS, pursuant to that certain Asset Purchase Agreement (the “County APA”), dated as of July 23, 2018, by and between the County, as seller, and Altitude Acquisitions, LLC (“Altitude”), an Illinois limited liability company, as buyer, the County transferred to all of its right, title and interest in and to a 220-bed nursing facility located at 500 South Art Bartell Road, Champaign County, Illinois 61802 (the “Facility”) and the underlying real property to University Rehab Real Estate, LLC (“Mortgagor”);

WHEREAS, pursuant to the County APA and the Special Warranty Deed, dated as of April 1, 2019, and recorded in the Recorder’s Office of Champaign County, Illinois, as Document Number 2019R04575 (the “County Deed”), transferring title to the Facility from the County to Mortgagor, the Facility is required to be operated as a skilled nursing facility, geriatric center, long-term care facility or assisted living facility through December 31, 2027 (as more particularly set forth in the County APA and the County Deed, the “Use Restrictions”);

WHEREAS, from April 1, 2019, through approximately June 16, 2023, an affiliate of Mortgagor, University Rehabilitation Center of C-U, LLC (the “Operator”) operated the Facility as a 220-bed skilled nursing facility;

WHEREAS, in June 2023, the Operator ceased operations of the Facility and transitioned all residents to other facilities;

WHEREAS, M&T Bank financed the acquisition of the Facility by Mortgagor pursuant to a loan secured by, among other things, a first-priority mortgage lien on and security interest in the Facility and all related personal property (together, the “Mortgaged Property”);

WHEREAS, pursuant to that certain Declaration of Covenants and Restrictions bearing the date of the 25th day of July 2018 (“Declaration”), and recorded on July 27, 2019, as part of the Minor Plat in the Recorder’s Office of Champaign County, Illinois, as Document Number 2018R12996, the County created a non-exclusive easement for ingress and egress (the “Easement”) for the benefit of “Lot 1” (as defined in the Declaration);

WHEREAS, pursuant to condition 1(e) of the Declaration, the Easement allows traffic only up to the amount and of the type reasonably expected to be necessary for the use of Lot 1 for the operation of a nursing home facility;

WHEREAS, M&T Bank commenced an action in the Circuit Court of the Sixth Judicial District, Champaign County, Illinois (the “Circuit Court”) against the Mortgagor, the Operator, and certain guarantors, seeking to foreclose on the Mortgaged Property and to recover all amounts outstanding under the governing loan documents (the “Loan Documents”), captioned *Manufacturers and Traders Trust Company v. University Rehab Real Estate, LLLC, University*

Rehabilitation Center of C-U, LLC, Atied Associates, LLC, William Rothner and Commercial Builders, Inc., Case No. 2023LA65 (the “Action”);

WHEREAS, by order dated September 22, 2023, the Circuit Court appointed Matthew Tarshis as receiver (the “Receiver”) of the Mortgagor and the Operator and authorized the Receiver to market and sell the Mortgaged Property; and

WHEREAS, the Parties desire to release the Use Restrictions and condition 1(e) of the Declaration to allow the Mortgaged Property to be used for other purposes.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound hereby, the Parties agree as follows:

1. **Effective Date**. This Agreement shall be effective when executed and delivered by all Parties (the “Effective Date”).
2. **Release of the Deed Restriction**. Upon two (2) business days’ written request from M&T Bank, the County shall execute and deliver to M&T Bank a release deed (the “Release Deed”) substantially in the form attached as **Exhibit A** or in such other form as reasonably requested by M&T Bank, releasing the Use Restrictions contained in the County Deed and condition 1(e) of the Declaration. The County hereby irrevocably authorizes M&T Bank or any purchaser of the Mortgaged Property to cause the Release Deed to be recorded in the Office of the Champaign County Recorder of Deeds upon receipt by the County of the Release Price (as defined below) in immediately available funds pursuant to the wire instructions attached as **Exhibit B**.
3. **Release Price**. In exchange for executing and delivering the Release Deed to M&T Bank, the County shall be entitled to receive at closing from any sale of the Mortgaged Property, the greater of (i) \$150,000, or (ii) 5% of the gross sale price of the Mortgaged Property (the “Release Price”). For the sake of clarity, the Release Price shall be no less than \$150,000. Should the gross sale price of the Mortgaged Property equal \$3,000,000 or less, the County shall be entitled to receive \$150,000 at closing. Should the gross sale price of the Mortgaged Property exceed \$3,000,000, the County will be entitled to receive 5% of the gross sale price at closing set forth in the applicable purchase and sale agreement, prior to closing costs (including, but not limited to, prorations, commissions, and costs paid to remove encumbrances) by and between the Receiver or any other seller of the Mortgaged Property and the third-party purchaser of the Mortgaged Property. The County acknowledges and agrees that, notwithstanding anything in this Agreement to the contrary, M&T Bank shall have no liability whatsoever for the payment of the Release Price, which Release Price shall be deemed earned only upon delivery of the Release Deed and closing

of a sale transaction for the Mortgaged Property and payable solely out of the sale proceeds at closing.

4. **Representations of the County.** The County hereby represents and warrants to M&T Bank as follows:

a) **Authority for this Agreement.** The County has all necessary power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement by the County and the consummation by the County of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of the County and no other authorization or proceedings on the part of the County are necessary to authorize this Agreement or to consummate the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by the County and, assuming due authorization, execution and delivery of this Agreement by M&T Bank, constitutes a legal, valid and binding agreement of the County, enforceable in accordance with its terms against the County.

b) **Consents and Approvals.** No consent, approval, authorization or order of, or registration or filing with, or notice to, any court or governmental agency or body having jurisdiction or regulatory authority over the County is required for (i) the County's execution and delivery of this Agreement (and each agreement executed and delivered by it in connection herewith), or (ii) the consummation by the County of the transactions contemplated by this Agreement (and each agreement executed and delivered by it in connection herewith) or, to the extent so required, such consent, approval, authorization, order, registration, filing or notice has been obtained, made or given (as applicable) and is still in full force and effect.

5. **Assignment.** Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned or delegated, in whole or in part, by the County without M&T Bank's prior written consent.

6. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the Parties and their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

7. **Entire Agreement.** This Agreement is the entire agreement and supersedes all oral agreements and understandings and all written agreements prior to the date hereof between or on behalf of the Parties with respect to the subject matter hereof. This Agreement may be amended only by a writing signed by each of the Parties, and any amendment shall be effective only to the extent specifically set forth in that writing.

8. **Further Assurances.** Each Party shall execute or cause to be executed such further instruments or documents as are necessary and reasonably requested by the other Party to further effect the purposes of this Agreement.

9. **Severability.** If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid or unenforceable provision had never been contained in this Agreement.

10. **Notices.** All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by registered or certified mail, postage prepaid, or by reputable overnight courier service, or by email with acknowledgment of receipt of complete transmission further confirmed by a copy sent by reputable overnight courier service. Any notice or other communication so given shall be validly given hereunder upon receipt if delivered by hand, upon receipt if sent by registered or certified mail or by overnight courier service, and upon confirmation of successful transmission if sent by email subject to receipt of the confirming copy sent by overnight courier service:

If to the County

The County of Champaign
1776 E. Washington,
Urbana, IL 61802
Email: countyexecutive@champaigncountyl.gov

with a copy (which will not constitute notice to the County) to:

Polsinelli PC
7676 Forsyth Boulevard, Suite 800
St. Louis, MO 63105
Attn: Ryan J. McCarty
Email: rmccarty@polsinelli.com

If to M&T Bank, to:

M&T Bank
277 Park Avenue
New York, NY 10172
Attn: Suzanne Crymes
Email: scrymes@mtb.com

with a copy (which will not constitute notice to M&T Bank) to:

Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Attn: Stephan E. Hornung
Alex Talesnick

Email: stephan.hornung@morganlewis.com
alex.talesnick@morganlewis.com

or, in each case, to such other address or facsimile number or to the attention of such other person as may be specified in writing by such Party to the other Party.

11. **Construction of Ambiguity.** It is acknowledged that each of the Parties has participated in the drafting of this Agreement and any ambiguity found herein shall not be construed against any Party.

12. **Descriptive Headings and Captions.** The descriptive headings and captions herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

13. **Counterparts.** This Agreement may be executed in multiple counterparts, any of which may be transmitted by electronic (e-mail) transmission, and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Agreement to present any copy signed by the Parties hereto to be charged. This Agreement may also be executed and delivered by any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com).

14. **Governing Law.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Illinois, without giving effect to its conflict of laws principles.

15. **Enforcement; Forum Selection Clause.**

a) The Parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, the Parties agree that the non-breaching Party shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement.

b) Each of the Parties to this Agreement hereby irrevocably submits to the non-exclusive jurisdiction of the Circuit Court of the Sixth Judicial District, Champaign County, Illinois with respect to any dispute related to or arising out of this Agreement. Each of the Parties hereby agrees that service of any process, summons, notice, or document in accordance with and to the respective addresses set forth in the notice provision of this Agreement shall be effective service of process for any proceeding arising out of, relating to or in connection with this Agreement or the transactions contemplated hereby.

16. JURY WAIVER. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR OTHER PROCEEDING DIRECTLY OR

**INDIRECTLY ARISING OUT OF, UNDER, RELATING TO OR IN
CONNECTION WITH THIS AGREEMENT, OR THE TRANSACTIONS
CONTEMPLATED BY THIS AGREEMENT.**

[*Signatures on following page*]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first written above.

**THE COUNTY OF CHAMPAIGN, ILLINOIS,
a public body corporate and politic of the State
of Illinois**

By: _____
Name:
Title:

**MANUFACTURERS AND TRADERS TRUST
COMPANY**

By. _____
Name:
Title:

EXHIBIT A

[Release Deed]

(See Attached)

THIS DOCUMENT PREPARED BY:

RECORDED AT THE REQUEST OF,
WHEN RECORDED MAIL TO:

SPACE OF THIS LINE IS FOR RECORDER'S USE ONLY

KNOW ALL MEN BY THESE PRESENTS, THAT

The County of Champaign, Illinois ("GRANTOR"), a public body corporate and politic of the State of Illinois, with an address of 1776 E. Washington, Urbana, IL 61802, for and in consideration of Ten and No/100 (\$10.00) DOLLARS, and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, does hereby remise, release convey and quit claim unto [GRANTEE] ("GRANTEE"), [GRANTEE'S ADDRESS], its heirs legal representatives, and assigns, all the right, title, interest, claim or demand whatsoever it may have acquired in, through, or by that Special Warranty Deed bearing the date of the 1st day of April 2019, and recorded in the Recorder's Office of Champaign County, Illinois, as Document Number 2019R04575 (the "County Deed"), to the premises therein described (the "Property"), situated in the County of Champaign, State of Illinois, as follows to wit:

See Exhibit A attached hereto.

Grantor hereby further acknowledges and agrees that effective as of the date hereof, the "Restrictions" (as defined in, and attached as Exhibit B to, the County Deed): (i) are hereby terminated, released and discharged in their entirety; (ii) shall be of no further force or effect; and (iii) shall no longer be a burden or encumbrance on title to the Property. Grantor hereby directs the Recorder's Office of Champaign County, Illinois, to cause this instrument to be recorded, evidencing the cancellation and release of the Restrictions.

Grantor hereby further acknowledges and agrees that effective as of the date hereof, that condition 1(e) in the Declaration of Covenants and Restrictions bearing the date of the 25th day of July 2018 ("Declaration"), and recorded July 27, 2019 as part of the Minor Plat in the Recorder's Office of Champaign County, Illinois, as Document Number 2018R12996: (i) is hereby terminated, released and discharged in its entirety; (ii) shall be of no further force or effect; and (iii) shall no longer be a burden or encumbrance on title to the Property. Grantor hereby directs the Recorder's Office of Champaign County, Illinois, to cause this instrument to be recorded, evidencing the cancellation and release of condition 1(e) of the Declaration.

| [signature block on following page]

IN WITNESS WHEREOF, Grantor has executed this Deed and Release as of the day and year first above written.

“GRANTOR”

THE COUNTY OF CHAMPAIGN, ILLINOIS,
a public body corporate and politic of the
State of Illinois

Attest:

By: _____
Name:
Title:

By: _____
Name:
Title:

STATE OF ILLINOIS)
)ss.:
COUNTY OF CHAMPAIGN)

I, the undersigned, a Notary Public for said County and state, do hereby certify that _____ of The County of Champaign, Illinois, a public body corporate and politic of the State of Illinois, and 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 in his capacity he signed and delivered the said instrument as the free and voluntary act an deed of said county, for the used and purposes set forth.

| WITNESS my hand and notarial seal or stamp, this ____ day of ____, 202420.

Notary Public

My commission expires:

EXHIBIT A

LEGAL DESCRIPTION FOR PROPERTY

Lot 1 of Minor Plat Champaign County Nursing Home Subdivision, as per Plat recorded July 27, 2018 as Document No. 2018R12996, situated in Champaign County, Illinois.

Also Formerly Described as:

Part of the Northeast Quarter of Section 16, Township 19 North, Range 9 East of the Third Principal Meridian, Champaign County, Illinois, described as follows: Beginning at the Northeast corner of Section 16, a point on the centerline of East Main Street, proceed South 00°37'27" East 1000.29 feet along the East line of said Section 16 to the True Point of Beginning, thence continue along the said East line of Section 16 South 00°37'27" East 767.98 feet to the North of Tract "B" as depicted by a plat of survey by Charles S. Danner dated November 3, 1966, thence South 89°36'12" West 814.84 feet along the said North line of Tract "B" and the North line of Tract "A" as depicted by the said plat of survey by Charles S. Danner to the proposed East right-of-way line of Art Bartell Road, thence North 00°11'25" East 575.20 feet along the said East right-of-way line of Art Bartell Road, thence North 90°00'00" East 235.96 feet, thence North 44°59'42" East 81.81 feet, thence North 90°00'00" East 216.10 feet thence North 00°03'18" East 137.32 feet, thence North 89°22'23" East 294.53 feet to the True Point of Beginning on the said East line of Section 16, situated in Champaign County, Illinois.

Also, a non-exclusive easement for ingress and egress to Lot 1, and for drainage and utilities, over Art Bartell Road, as shown on the Minor Plat Champaign County Nursing Home Subdivision, recorded July 27, 2018 as Document No. 2018R12996, as set forth in the Declaration of Covenants and Restrictions attached thereto.

Also, a non-exclusive easement for ingress and egress to the Northern entrance to Lot 1, as shown on the Minor Plat Champaign County Nursing Home Subdivision, recorded July 27, 2018 as Document No. 2018R12996, as set forth in the Declaration of Covenants and Restrictions attached thereto.

Address: 500 South Art Bartell Road, Urbana, IL 61802

PIN: 92-21-16-200-023

EXHIBIT B

[County Wire Instructions]

[to be attached]