

UNOFFICIAL COPY

0010117716

9148/0242 10 001 Page 1 of 60
2001-02-13 15:08:32
Cook County Recorder 139.00



①
78977268, 6JZ, D2

60

REIMBURSEMENT, MORTGAGE AND SECURITY AGREEMENT

Between

HOLY FAMILY MEDICAL CENTER,

as Mortgagor

and

RESURRECTION HEALTH CARE CORPORATION

as Mortgagee

February 6, 2001

This instrument was prepared by
and to be returned after recording to:

Julie K. Seymour
Ungaretti & Harris
3500 Three First National Plaza
Chicago, Illinois 60602

BOX 333-CT1

UNOFFICIAL COPY

TABLE OF CONTENTS

	Page
1. GENERAL REPRESENTATIONS AND WARRANTIES.....	4
2.A. GENERAL COVENANTS.....	6
2.B. NEGATIVE COVENANTS.....	8
3. GUARANTY AND REIMBURSEMENT.....	9
4. SALE, LEASE, MORTGAGE OR OTHER TRANSFER.....	10
5. UNIFORM COMMERCIAL CODE.....	12
6. PRIORITY OF LIEN; AFTER-ACQUIRED PROPERTY.....	14
7. CHANGES AND ALTERATIONS.....	14
8. COVENANTS AS TO CORPORATE EXISTENCE, MAINTENANCE OF PROPERTIES AND SIMILAR MATTERS; RIGHT OF CONTEST.....	15
9. INSURANCE.....	18
10. ESCROWS FOR IMPOSITIONS AND INSURANCE.....	19
11. DAMAGE OR DESTRUCTION.....	20
12. CONDEMNATION.....	22
13. FINANCIAL STATEMENTS, ETC.....	23
14. ENVIRONMENTAL MATTERS.....	24
15. RATES AND CHARGES.....	26
16. CALCULATION OF DEBT SERVICE COVERAGE.....	27
17. PERFORMANCE BY MORTGAGEE.....	29
18. INDEMNIFICATION.....	30
19. RESERVED.....	31
20. EVENTS OF DEFAULT.....	31
21. REMEDIES ON DEFAULT.....	33
22. RIGHTS ARE CUMULATIVE.....	35
23. CONDITIONS PRECEDENT TO ISSUANCE OF GUARANTY.....	35
24. NO WAIVER.....	37
25. TAXES ON MORTGAGE OR NOTE.....	38
26. OBLIGATIONS ABSOLUTE.....	38
27. FURTHER ASSURANCES.....	39
28. RELEASE OF LIEN.....	39
29. AMENDMENT.....	39
30. NOTICES.....	40
31. EXPENSES OF LITIGATION AND AGREEMENT TO PAY COSTS.....	40
32. PROVISIONS SEVERABLE.....	41
33. PARTIAL INVALIDITY OF LIEN.....	41
34. GOVERNING LAW.....	41
35. CONSENT OF MORTGAGEE.....	41
36. CAPTIONS.....	41
37. MEANINGS.....	41
38. BINDING ON SUCCESSORS AND ASSIGNS.....	42

10117716

UNOFFICIAL COPY

REIMBURSEMENT, MORTGAGE AND SECURITY AGREEMENT

THIS REIMBURSEMENT, MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of the 6th day of February, 2001 by HOLY FAMILY MEDICAL CENTER whose address is 100 North River Road, Des Plaines, Illinois 60016 ("Mortgagor"), to RESURRECTION HEALTH CARE CORPORATION, whose address is 7435 West Talcott Avenue, Chicago, Illinois 60631 ("Mortgagee").

PRELIMINARY STATEMENT

Mortgagor is the fee owner of the land located in Cook County, Illinois, specifically described in *Exhibit A* hereto (the "Land").

The Illinois Health Facilities Authority (the "Authority") has issued \$41,000,000 in original aggregate principal amount of its Revenue Bonds, Series 1997 (Holy Family Medical Center) (the "Bonds") pursuant to the terms of a Bond Trust Indenture dated as of December 1, 1997, as supplemented and amended (the "Bond Indenture"), between the Authority and American National Bank and Trust Company of Chicago, as bond trustee (the "Bond Trustee") to enable Mortgagor to finance and retire certain improvements to its health care facilities.

In order to generate substantial interest cost savings, Mortgagor previously requested MBIA Insurance Corporation (the "Bond Insurer") to issue its bond insurance policy (the "Policy") to insure the timely payment of the principal of and interest on the Bonds, and to issue its surety bond policy (the "Surety Bond") to provide for the payment of debt service on the Bonds if it is necessary to make a withdrawal from the Debt Service Reserve Fund created by the Bond Indenture.

The Bond Insurer has issued and continues the effectiveness of the Policy and the Surety Bond on the condition that the Mortgagee guarantees the obligation of the Mortgagor to repay all amounts payable by the Mortgagor with respect to the Bonds or paid by the Bond Insurer pursuant to the Policy and the Surety Bond. The Mortgagee has entered into the Guaranty Agreement (the "Guaranty") in favor of the Bond Trustee and the Bond Insurer on the condition that the Mortgagor enters into this Mortgage in favor of the Mortgagee upon the terms and conditions herein set forth.

The Guaranty has been authenticated as an "Obligation" under the terms of the Resurrection Master Indenture.

As used in this Mortgage, the term "Liabilities" means and includes all of the following without duplication: all amounts paid by Mortgagee to the Bond Trustee and the Bond Insurer under the Guaranty; all indebtedness of any kind arising under, and all amounts of any kind which at any time become due or owing to Mortgagee under or with respect to, the Note and this Mortgage; all of the covenants, obligations and agreements (and the truth of all representations and warranties) of Mortgagor pursuant to this Mortgage; all advances, costs or expenses paid or incurred by Mortgagee to protect any or all of the Mortgaged Property (as hereinafter defined),

UNOFFICIAL COPY

perform any obligation of Mortgagor hereunder or collect any amount owing to Mortgagee which is secured hereby; interest on all of the foregoing; and all costs of enforcement and collection of this Mortgage and the Liabilities.

Terms not otherwise defined herein have the meanings set forth on *Schedule I* hereto, and if not so defined, bear the meanings ascribed to them in the Master Indenture; provided that references in such definitions in the Master Indenture to "Corporation," and "Members of the Obligated Group" shall be deemed to mean the Mortgagor, and references to the "Master Trustee" shall be deemed to mean the Mortgagee. Notwithstanding the foregoing, any terms incorporated by reference herein shall bear the meanings ascribed to them in the document from which they are being incorporated. In addition, where a calculation of "Historical Debt Service Coverage Ratio" or "Historical Pro Forma Debt Service Coverage Ratio" is required hereunder, such calculations (i) shall be made with respect to the Mortgagor by applying the definitions and assumptions contained in the Master Indenture, and (ii) shall be made on a monthly basis (as of the last day of each calendar month), based upon the immediately preceding twelve calendar months.

GRANT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Mortgagor, and in order to secure the payment of the Liabilities and the performance of all the obligations of Mortgagor contained herein,

MORTGAGOR HEREBY MORTGAGES, WARRANTS, CONVEYS, GRANTS, BARGAINS, SELLS, TRANSFERS, ASSIGNS AND PLEDGES UNTO MORTGAGEE, ITS SUCCESSORS AND ASSIGNS, A CONTINUING MORTGAGE AND SECURITY INTEREST IN AND TO ALL THE PROPERTIES, RIGHTS, INTERESTS AND PRIVILEGES DESCRIBED IN CLAUSES (i) THROUGH (x) BELOW, ALL OF THE SAME BEING COLLECTIVELY REFERRED TO HEREIN AS THE "MORTGAGED PROPERTY."

(a) **Real Estate.** All of the Land, together with all and singular the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise appertaining to the Land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all estate, claim, demand, right, title or interest of Mortgagor in and to all gas, oil, minerals, coal and other substances of any kind or character underlying the Land; all estate, claim, demand, right, title or interest of Mortgagor in and to any street, road, highway or alley (vacated or otherwise) adjoining the Land or any part thereof and all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any of the foregoing (all of the foregoing is herein referred to collectively as the "Real Estate");

(b) **Improvements and Fixtures.** All buildings, structures, enclosures, patios, parking areas, fences, gates, signage and all man-made edifices, and all furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on the Real Estate and all replacements thereof, together with all building or construction materials, equipment, appliances, machinery, plant equipment, fittings, apparatus,

UNOFFICIAL COPY

10117716

fixtures and articles of personal property of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Real Estate and now owned or hereafter acquired by Mortgagor, and all additions and accessions thereto and replacements thereof, including (without limitation) all motors, boilers, tanks, engines, pipes, pumps and devices for the operation of pumps, and all heating, electrical, lighting, power, incinerating, laundry, fire prevention and extinguishing, communications, plumbing, air conditioning, compressed air, refrigeration and ventilation equipment (whether single units or centrally controlled), carpeting, shades, screens, cabinetry, landscaping, and all gasoline storage tanks and underground machinery, pumps and equipment and apparatus used in connection with the use and operation of the Real Estate or the improvements, whether or not such machinery, equipment or apparatus is attached or affixed to the Real Estate or the improvements (all of the foregoing is herein referred to collectively as the "Improvements"; all of the Real Estate and the Improvements, and any other property which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises"); provided that security interests superior to the lien hereof may be granted in any Improvements acquired subsequent to the date hereof pursuant to purchase money financing in an amount outstanding at any time in the aggregate not in excess of \$5,000,000;

(c) **Rents.** All rents, issues, profits, royalties, avails, fees, membership dues and other benefits derived or owned by Mortgagor directly or indirectly from the Premises;

(d) **Leases.** All right, title and interest of Mortgagor under any and all leases, subleases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whereby any person agrees to pay money or any consideration for the use, possession or occupancy of, or any estate in, the Premises or any part thereof, and all rents, security deposits, advance rentals, income, profits, benefits, avails, advantages and claims against guarantors under any thereof;

(e) **Contracts for Operation.** All agreements for the operation of the Premises, together with all manufacturers' warranties given in connection with the Premises or any portion thereof;

(f) **Plans.** All rights of Mortgagor to plans and specifications, designs, drawings and other matters prepared for any construction on the Real Estate;

(g) **Contracts for Construction.** All rights of Mortgagor under any contracts executed by Mortgagor as owner with any provider of goods or services for or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Premises;

(h) **Contracts for Sale or Financing.** All rights of Mortgagor as seller or borrower under any agreement, contract, understanding or arrangement pursuant to which Mortgagor has, with the consent of Mortgagee, obtained the agreement of any person to pay or disburse any money for Mortgagor's sale (or borrowing on the security) of the Mortgaged Property or any part thereof;

UNOFFICIAL COPY

(i) **Unrestricted Receivables.** All rights of the Mortgagor in its Unrestricted Receivables.

(j) **Other Property.** All right, title and interest of Mortgagor in and to all insurance proceeds and condemnation awards relating to the Premises and all permits, licenses, franchises, certificates, trademarks, trade names and symbols obtained by Mortgagor in connection with the operation of the Premises.

TO HAVE AND TO HOLD all and singular the Mortgaged Property unto Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, subject to Permitted Encumbrances.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. GENERAL REPRESENTATIONS AND WARRANTIES.

Mortgagor represents and warrants that:

(a) **Organization; Powers; Compliance.** The Mortgagor is a not-for-profit corporation duly incorporated, validly existing and in good standing under the laws of the State of Illinois, and has full power and authority (i) to own its Property and to carry on its operations as now conducted and as contemplated to be conducted, and (ii) to execute, deliver, perform and secure its obligations under this Mortgage and the Bond Documents. The Mortgagor has complied with all provisions of applicable law in all matters related to such actions of the Mortgagor as are contemplated by the Bond Documents and this Mortgage. All necessary approvals of Holy Family Health Care System, Inc. (the "Parent") for the execution, delivery and performance of this Mortgage have been obtained.

(b) **Authorization; Absence of Conflicts.** The execution, delivery and performance of this Mortgage and the Bond Documents (i) have been duly authorized by all necessary action on the part of the Mortgagor, (ii) do not and will not conflict with, or result in a violation of, any provision of law or any order, writ, rule or regulation of any court or governmental agency, authority or instrumentality binding upon or applicable to the Mortgagor and (iii) do not and will not conflict with, result in a violation of, or constitute a default under, any order, resolution, agreement or instrument to which the Mortgagor is a party or by which the Mortgagor or any of its property is bound.

(c) **Binding Obligation.** This Mortgage and each of the Bond Documents to which the Mortgagor is a party, when executed by the parties thereto, will be valid and binding obligations of the Mortgagor enforceable in accordance with their terms, except to the extent, if any, that the enforceability thereof may be limited by (i) any applicable bankruptcy, insolvency or other similar law or enactment now or hereafter enacted affecting the enforcement of creditors' rights and (ii) the fact that specific performance and other equitable remedies are granted only in the discretion of a court; and, with respect to the Master Indenture, subject to the limitations described in the Master Indenture.

UNOFFICIAL COPY

(d) Governmental Consent or Approval. No consent, approval, permit, authorization, license, certificate, including any necessary certificate of need, or order of, or registration or filing with, any court or governmental agency, authority or other instrumentality not already obtained, given or made is required on the part of the Mortgagor for the execution, delivery and performance by the Mortgagor of this Mortgage or the Bond Documents.

(e) Absence of Material Litigation. There is no action, proceeding or investigation before or by any court, governmental agency or other body or official, pending or to its knowledge threatened against or affecting the Mortgagor, questioning the validity of any action by the Mortgagor in connection with the execution, delivery and performance of this Mortgage or the Bond Documents, or which, to the knowledge of the Mortgagor, would adversely affect the validity or enforceability of, or the authority or ability of the Mortgagor to perform its obligations under this Mortgage or the Bond Documents or which would otherwise affect its status as a Tax-Exempt Organization. There is no action or proceeding pending or, to the best of the Mortgagor's knowledge, threatened against or affecting the Mortgagor before any court, governmental agency or other body or official which would have a material adverse effect on the financial condition or operations of the Mortgagor.

(f) Defaults and Restraints. The Mortgagor is not in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained in any material agreement or document to which the Mortgagor is a party or by which the Mortgagor or any of its property is bound. The Mortgagor is a not party to any material agreement or document, or subject to any corporate restriction or any judgment, order, injunction, rule or regulation, which materially adversely affects its abilities to perform its obligations under this Mortgage.

(g) Financial Information. The financial statements of the Mortgagor for its three fiscal years ended December 31, 1997, 1998 and 1999 as delivered to the Mortgagee, are true and correct in all material respects and have been prepared in accordance with generally accepted accounting principles (except as noted therein) and present fairly the financial position of the Mortgagor as of the respective dates thereof and the income of the Mortgagor and changes in the Mortgagor's financial position for the periods referred to therein. There have been no material adverse changes to the financial condition of the Mortgagor since December 31, 1999 except as disclosed in writing, including *Exhibit C* hereto, to the Mortgagee.

(h) ERISA Compliance. There are no ERISA Affiliates. The Mortgagor is in substantial compliance in all material respects with the applicable provisions of ERISA and the regulations and published interpretations thereunder, and the Mortgagor has not failed to comply with any such provision, regulation or interpretation which would subject it to any material tax or penalty. No Reportable Event (as defined in Section 4043(b) of Title IV of ERISA) has occurred with respect to any pension plan which might constitute grounds for a termination of, and no proceedings have been instituted by the Mortgagor to withdraw from or to terminate, any pension plan as to which the Mortgagor may have any material liability.

(i) Disclosure. There are no facts that the Mortgagor has failed to disclose to the Mortgagee that, individually or in the aggregate, materially adversely affect or, as far as the

UNOFFICIAL COPY

Mortgagor can foresee, will materially adversely affect the business, properties, operations or condition (financial or otherwise) or prospects of the Mortgagor.

(j) Bond Documents. The representations and warranties of the Mortgagor as contained in the Bond Documents are true and correct in all material respects as of the date hereof and the Closing Date.

(k) No Default. No Potential Default or Event of Default has occurred and is continuing or would result from the obligations incurred by the Mortgagor hereunder or by the actions contemplated hereby.

(l) Title. Mortgagor has good and marketable fee simple title to such of the Mortgaged Property which constitutes Real Estate. Title to the Mortgaged Property is free and clear of any liens, charges, encumbrances, security interests and adverse claims other than the items insured over or other than Permitted Encumbrances. This Mortgage constitutes a valid, subsisting first lien on and security interest in and to the Mortgaged Property.

(m) Financing Statements. There is no financing statement covering the Mortgaged Property, or any part of it, on file in any public office other than financing statements executed and filed in connection herewith and the issuance of the Bonds or with respect to any Permitted Encumbrances.

(n) Tax-Exempt Status. Mortgagor is a Tax-Exempt Organization, and Mortgagor knows of no meritorious basis for the revocation or withdrawal of such status. Mortgagor has filed all federal, state, county, municipal and city and other tax returns required to have been filed by it, and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by it, and Mortgagor does not know of any basis for any additional assessment in respect of any such taxes. Mortgagor has paid or will pay in full all sums now or hereafter owing for labor, materials, supplies, personal property and services of every kind and character used, furnished or installed in or on the Premises, and no claim for any such sums now exists.

2.A. GENERAL COVENANTS.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

(a) First Lien. Mortgagor will protect and defend the first lien and security interest status of this Mortgage, and, except for Permitted Encumbrances, will not act to acquiesce in or allow any mortgaging, hypothecating or encumbering of the Mortgaged Property with any other lien or security interest of any nature whatsoever (whether statutory, constitutional or contractual), regardless of whether such lien or security interest is allegedly or expressly inferior to the lien and security interest created by this Mortgage and if any such lien or security interest is asserted against the Mortgaged Property, Mortgagor will promptly, and at its own cost and expense, (i) within twenty days from the date such lien or security interest is so asserted, give Mortgagee notice of the assertion of such lien or security interest, and (ii) pay the underlying claim in full or take such other action so as to cause such lien or security interest to be released.

UNOFFICIAL COPY

Such notice shall specify who is asserting such lien or security interest and shall detail the origin, nature and amount of such underlying claim.

(b) Master Indenture Covenants. The Mortgagor will, together with any other Members of the Obligated Group under the Master Indenture, comply with each of the covenants and agreements contained in the Master Indenture, and the Mortgagor will comply with each of the covenants and agreements contained in the Loan Agreement. The Master Indenture and Loan Agreement covenants and agreements, together with the related definitions of terms used therein and the exhibits referred to therein, are hereby incorporated by reference into this Mortgage with the same effect as if such covenants, definitions and exhibits were set forth in full herein for the benefit of the Mortgagee. Any amendment, supplement, modification, change or waiver of any of the covenants, agreements, definitions and exhibits of the Master Indenture or the Loan Agreement incorporated herein by reference which requires the consent or approval of the Bond Insurer shall not have any force and effect under this Mortgage unless the Mortgagee shall have consented in writing to such amendment, supplement, modification, change or waiver, which consent shall not be unreasonably withheld. Any amendment, supplement, modification, change or waiver described in the immediately preceding sentence which does not require the consent or approval of the Bond Insurer shall be deemed incorporated herein upon obtaining the required approvals or consents under the Master Indenture or Loan Agreement, as applicable. In the event of any conflict between the terms hereof and the Master Indenture, this Mortgage shall control.

(c) Compliance with Agreements. The Mortgagor will observe and perform all of its obligations under this Mortgage and the Bond Documents.

(d) Access. The Mortgagor will permit the Mortgagee or any representative thereof, at any reasonable time and from time to time upon reasonable notice, to examine and make copies of and abstracts from the records and books of account of the Mortgagor, and to visit its properties and offices, and discuss general business and financial matters with its management. Mortgagee, its agents and representatives may at all reasonable times upon reasonable advance notice make such inspections of the Mortgaged Property as Mortgagee may reasonably deem necessary or desirable, and access thereto shall be permitted for that purpose.

(e) Litigation Notice. The Mortgagor will annually, at the same time it furnishes to the Mortgagee the financial statements required pursuant to Section 13 hereof, notify the Mortgagee in writing of any action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency which (i) has remained unsettled for a period of one year from the commencement thereof and involves claims for damages or relief in an amount greater than \$2,500,000, or (ii) has resulted in a final judgment or judgments for the payment of money in an amount greater than \$500,000 in excess of insurance coverage, or (iii) has resulted in an attachment or lien on any Mortgagor's assets or holdings for an amount exceeding \$500,000.

(f) ERISA Compliance. The Mortgagor and ERISA Affiliates will maintain each of its pension plans as to which it may have liability in compliance in all material respects with the applicable provisions of ERISA and the regulations and published interpretations thereunder the

10117716

UNOFFICIAL COPY

failure to comply with which could subject the Mortgagor or ERISA Affiliate to a tax or penalty which might have material adverse effect on its financial condition.

(g) Progress Reports and Completion Certificate. The Mortgagor will submit to the Mortgagee copies of all progress reports and other documents which the Mortgagor is required to provide to the Bond Trustee pursuant to Section 303 of the Bond Indenture. All such progress reports and other documents shall be delivered to the Mortgagee at the same time they are delivered to the Bond Trustee.

(h) Defaults. The Mortgagor will promptly notify the Mortgagee of the occurrence of any Event of Default or Potential Default of which it has knowledge, setting forth the details of such Event of Default or Potential Default and any action which the Mortgagor proposes to take or has taken with respect thereto.

2.B. NEGATIVE COVENANTS

The Mortgagor covenants and agrees with the Mortgagee that the Mortgagor will not, directly or indirectly, unless the Mortgagee shall otherwise consent in writing:

(a) Taxability. Take any action nor permit any action within its control to be taken which would cause (i) the interest on the Bonds, or any part thereof, to be includable in the gross income of the owner thereof for purposes of federal income taxation or (ii) the Mortgagor to no longer be a Tax-Exempt Organization.

(b) Amendments. Amend, modify, terminate or grant, or permit the amendment, modification, termination or grant of, any waiver under, or consent to, or permit or suffer to occur any action or omission which results in, or is equivalent to, an amendment, modification, or grant of a waiver under, any Bond Document without the prior written consent of the Mortgagee, provided that if such amendment does not, pursuant to the Bond Documents, require the consent of the Bond Insurer, then no consent of the Mortgagee hereunder shall be required.

(c) Reserved.

(d) Merger, Consolidation, Sale or Conveyance. Merge into, or consolidate with, one or more corporations which are not Members of the Obligated Group, allow one or more of such corporations to merge into it or sell or convey all or substantially all of its Property to any Person who is not a Member of the Obligated Group.

(e) Permitted Additional Indebtedness. Incur any Indebtedness in excess of \$5,000,000 in the aggregate at the date of calculation, except for (i) Indebtedness outstanding as of the Closing Date, including Indebtedness incurred under the Bond Documents and this Mortgage, (ii) any refinancing of the outstanding principal amount of the Country Life Note as defined in *Exhibit C* hereto, (iii) liabilities in the ordinary course of business, and (iv) contributions to self-insurance programs.

(f) Optional Redemption of Bonds. Direct the Authority to optionally redeem all or any portion of the Bonds pursuant to Section 501 of the Bond Indenture unless sufficient funds

10117716

UNOFFICIAL COPY

for such redemption are on deposit in the Optional Redemption Fund established under the Bond Indenture.

3. GUARANTY AND REIMBURSEMENT

(a) Issuance of the Guaranty. The Mortgagee agrees to issue on the Closing Date, upon the terms, subject to the satisfaction of the conditions and relying upon the representations and warranties set forth in this Mortgage, the Guaranty in substantially the form of *Exhibit B* hereto.

(b) Fees. The Mortgagor agrees to pay to Mortgagee on the first anniversary of the Closing Date and each anniversary date thereof a fee of 25 basis points (0.25%) of the then outstanding principal amount of Bonds on such date. Such fee may be used by Mortgagee for any lawful corporate purpose of the Mortgagee. Any reference herein to fees and/or other amounts or Obligations payable under this Mortgage shall include all fees and other amounts payable pursuant to this paragraph. Mortgagor shall pay the reasonable legal fees and expenses of the Mortgagee in connection with the preparation, execution and delivery of this Mortgage and the Guaranty and the enforcement hereof and thereof.

(c) Reimbursement. The Mortgagor agrees to reimburse Mortgagee on demand for any amounts paid by Mortgagee pursuant to the Guaranty, and to reimburse the applicable Resurrection Member or Members on demand for any amounts paid by any such Resurrection Member to the Bond Trustee or the Bond Insurer pursuant to the Resurrection Master Indenture attributable to the Guaranty.

(d) Method of Payment; etc. All payments to be made by the Mortgagor under this Mortgage shall be made in lawful money of the United States of America (in immediately available funds). On each date on which any amount is due from the Mortgagor pursuant to this Mortgage, the Mortgagor shall pay or cause to be paid the same to the Mortgagee by check or by wire transfer by 1:00 p.m. Chicago, Illinois time on such date. If such amount is so paid after 1:00 p.m. Chicago, Illinois time on such date, such amount shall not be considered paid on such date, but shall be considered paid on the next business day, and interest shall accrue thereon until such next day, payable on demand, at the Default Rate specified in Section 8(1) hereof. If payment is made by check, such check should be delivered to the President at 7435 West Talcott Avenue, Chicago, Illinois 60631. If payment is made by wire transfer, such payment shall be made pursuant to instructions given by Mortgagee to Mortgagor.

(e) Late Payments. If any Liability owed by Mortgagor to Mortgagee hereunder is not paid when due, such Liability shall bear interest from the due date thereof until paid in full at a rate per annum equal to the Default Rate.

4. SALE, LEASE, MORTGAGE OR OTHER TRANSFER.

(a) No Right of Transfer. Except as set forth in this Section 4(d), Mortgagor shall have no right to sell, mortgage, lease, sublease or otherwise transfer the Mortgage Property or

UNOFFICIAL COPY

any part thereof without Mortgagee's prior written consent which shall not be unreasonably withheld or delayed.

(b) Leases. If Mortgagee consents to any lease or sublease of all or any portion of the Mortgaged Property, such consent shall not be construed to grant any lessee or sublessee of Mortgagor any rights which would be superior to the rights of Mortgagee under this Mortgage or to the lien in favor of Mortgagee created hereby. Rather, any such lease or sublease is, and shall at all times be, subordinate to the terms, conditions and covenants of this Mortgage.

(c) Additional Documentation. Anything in this Section 4 to the contrary notwithstanding, Mortgagee may require Mortgagor, and any lessee or sublessee of Mortgagor, to execute such additional documentation as Mortgagee may deem reasonably necessary to affirm the first lien position of this Mortgage and to confirm of record that such lease or sublease (other than leases or subleases that are subordinated pursuant to their terms) is subordinate to the lien of this Mortgage.

(d) Permitted Dispositions. The Mortgagor agrees that it will not, in any consecutive twelve month period or in any consecutive thirty-six month period, as the case may be, sell, lease or otherwise dispose of Property which, together with all other Property transferred by the Mortgagor in transactions other than those described in Subsections (A) through (F) hereof, totals for any consecutive twelve month period or for any consecutive thirty-six month period, as the case may be, in excess of 8% or 15%, respectively, of the Property of the Mortgagor (calculated on the basis of the Book Value of the assets shown on the assets side of the balance sheet in the financial statements of the Mortgagor for the Fiscal Year next preceding the date of such sale, lease or other disposition for which combined financial statements of the Mortgagor which have been reported on by independent certified public accountants are available, or if the Mortgagor so elects, on the basis of Current Value) except for transfers in the ordinary course of business and except for transfers of Property:

- (1) Which is replaced with Property of equal or greater value and usefulness;
- (2) To any Person if prior to such sale, lease or other disposition there is delivered to the Mortgagee an Officer's Certificate stating that, in the judgment of the signer, such Property has, or within the next succeeding 24 calendar months is reasonably expected to, become inadequate, obsolete, worn out, unsuitable, unprofitable, undesirable or unnecessary and the sale, lease, removal or other disposition thereof will not impair the structural soundness, efficiency or economic value of the remaining Property;
- (3) To a Member of the Obligated Group;
- (4) Upon fair and reasonable terms no less favorable to the Mortgagor than would obtain in a comparable arm's-length transaction, if following such transfer the proceeds received by the Mortgagor are applied to acquire additional Property or are applied to repay the Bonds;

UNOFFICIAL COPY

(5) To any Person, if such Property consists solely of assets which are specifically restricted by the donor or grantor to a particular purpose which is inconsistent with their use for payment on the Bonds or Indebtedness, including amounts owed under this Mortgage and the Note; or

(6) To any person upon delivery to the Mortgagee of: (i) a certificate of the Mortgagor demonstrating that (x) the Historical Pro Forma Debt Service Coverage Ratio for the most recent full fiscal year (for which audited financial statements are available) of the Mortgagor immediately prior to such sale, lease or other disposition determined as if such sale, lease or other disposition had occurred on the first day of such fiscal year, is not less than 1.20:1 and (y) immediately after such sale, lease or other disposition, the conditions described in Section 415(A)(ii) or 415(A)(iii) of the Master Indenture would be met for the incurrence of one dollar of additional Indebtedness.

The foregoing provisions of this Section notwithstanding, the Mortgagor further agrees that it will not sell, lease, donate or otherwise dispose of Property (a) which could reasonably be expected to result in a reduction of the Historical Debt Service Coverage Ratio for the Mortgagor such that the Mortgagee could or would be obligated to require the Mortgagor to retain a Consultant pursuant to Section 15 hereof, or (b) if a Consultant has been retained in the circumstances described in Section 15 hereof, such action, in the opinion of such Consultant, will have an adverse effect on the Income Available for Debt Service of the Mortgagor. In the event that the Mortgagee objects to any such sale, lease, donation or disposition on the grounds that the same is prohibited by subsection (a) of this paragraph, the Mortgagor shall have the right to retain a Consultant to review whether such sale, lease, donation or disposition could reasonably be or could have reasonably been expected at the time thereof to result in a reduction of the Historical Debt Service Coverage Ratio for the Mortgagor, which is prohibited by such subsection (a). If the Consultant concludes in a report (which report, including without limitation, the scope, form, substance and other aspects thereof, are acceptable to the Mortgagor and which is delivered to the Mortgagee within three months after the receipt of such objection) that such sale, lease, donation or disposition could not reasonably be or have been expected at the time thereof to result in such a prohibited reduction, such conclusion shall be determinative as to whether subsection (a) has been violated; it being understood that, regardless of whether such a report has been prepared, the Mortgagor retains the right to litigate, in the course of a declaratory judgment action or in connection with the enforcement of the remedies set forth in Section 21 hereof, whether or not such a sale, lease, donation or disposition could reasonably be or could reasonably have been expected to result in such a prohibited reduction. The foregoing provisions of this Section notwithstanding, the Mortgagee shall not have the right to object to any such sale, lease, donation or disposition under Subsection (d) above more than six months after the date of receipt by the Mortgagee of the audited financial statements required to be delivered pursuant to Section 13 hereof for the Fiscal Year during which such sale, lease, donation or disposition occurred.

(e) Transactions with Related Persons. The Mortgagor agrees that, except as otherwise permitted by this Mortgage and except as otherwise required by law, it will not enter into any transaction, including without limitation, the purchase, sale, exchange or transfer of Property, the rendering of any service, the making of any loan or the extension of any credit, with

10117716

UNOFFICIAL COPY

any Affiliate except upon fair and reasonable terms no less favorable to it than would obtain in a comparable arm's-length transaction with a person not an Affiliate. For the purposes of this Section, the discontinuance by the Mortgagor of any activity or business in anticipation of the commencement or expansion by an Affiliate of a substantially similar activity or business shall be deemed to be a transaction subject to the limitations of this Section.

5. UNIFORM COMMERCIAL CODE.

This Mortgage constitutes a security agreement under the Uniform Commercial Code, as amended, in effect in Illinois (the "Code") with respect to any part of the Mortgaged Property which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all for the purposes of this Section 5 called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this Section 5 shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof and other than Permitted Encumbrances.

(b) The Collateral is to be used by Mortgagor solely for business purposes, being installed upon the Mortgaged Property for Mortgagor's own use.

(c) Except as allowed by Section 4(d) hereof, the Collateral will be kept at the Premises comprised within the Mortgaged Property, and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code), and the Collateral may be affixed to the Premises but will not be affixed to any other real property.

(d) The only persons having any interest in the Mortgaged Property are the Mortgagor, the Mortgagee and permitted users thereof.

(e) With the exception of financing statements that have expired but have not been terminated or financing statements evidencing Permitted Encumbrances, no financing statement covering any of the Collateral or any proceeds thereof is on file in any public office; and Mortgagor will, at its own cost and expense, upon demand, furnish to Mortgagee such further information, execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee, and do all such acts and things as Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Liabilities, subject to no adverse liens or encumbrances. Mortgagor will pay the cost of filing or recording such financing statements or other documents and this instrument in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable.

(f) Upon any Event of Default (as hereinafter defined) hereunder and at any time thereafter, Mortgagee at its option may declare the Liabilities immediately due and payable, all as

UNOFFICIAL COPY

more fully set forth in Section 21 hereof, and thereupon Mortgagee shall have all the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter without breach of the peace upon any place that the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to the Premises, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations as provided in the Code. Mortgagee, without removal, may render the Collateral unusable and dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place within Cook County, Illinois to be designated by Mortgagee. Mortgagee will give Mortgagor at least ten days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof will be made. The requirements of reasonable notice shall be met if such notice is mailed, by first class mail, postage prepaid, to the address of Mortgagor shown in this Mortgage or in Mortgagee's records at least ten days before the time of the sale or disposition. Mortgagee may buy at any public sale, and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Premises comprised within the Mortgaged Property, the Collateral and Premises to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling, or the like and reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Liabilities. Mortgagee will pay to Mortgagor any surplus realized on such disposition. The ability of the Mortgagee to sell the Mortgaged Property is subject to the provisions of Section 21(d) hereof.

(g) The remedies of Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided herein or under the Code shall not be construed as a waiver of any of the other remedies of Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Liabilities remains unsatisfied.

(h) The terms and provisions contained in this Section 5 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

(i) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described at the beginning of this Mortgage, which goods are or are to become fixtures relating to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in Section 30 hereof. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located. Mortgagor is the record owner of the Premises.

10117716

UNOFFICIAL COPY

6. PRIORITY OF LIEN; AFTER-ACQUIRED PROPERTY.

(a) This Mortgage is and will be maintained as a valid first mortgage on the Mortgaged Property, subject to Permitted Encumbrances. Mortgagor will not, directly or indirectly, create or suffer or permit to be created, or to stand against the Mortgaged Property or any portion thereof, or against the rents, issues and profits thereof, any lien, security interest, encumbrance or charge prior to or on a parity with the lien of this Mortgage, except for Permitted Encumbrances.

(b) Mortgagor will keep and maintain, or cause to be kept and maintained, the Mortgaged Property free from all liens for monies due and payable to persons supplying labor for and providing materials used in construction, modification, repair or replacement of the Mortgaged Property. If any such liens shall be filed against the Mortgaged Property, Mortgagor agrees to cause the same to be discharged of record promptly after Mortgagor has been given notice thereof, subject to the right to contest such lien permitted pursuant to Section 8(l) hereof.

(c) In no event shall Mortgagor do, or permit to be done, or omit to do, or permit the omission of, any act or thing, the doing of which, or omission to do which, would impair the security of this Mortgage.

(d) All property of every kind acquired by Mortgagor after the date hereof, which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage, shall immediately upon the acquisition thereof by Mortgagor, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien and security of this Mortgage. Nevertheless, Mortgagor will do such further acts and execute, acknowledge and deliver such further conveyances, mortgages, security agreements, financing statements and assurances as Mortgagee shall reasonably require for accomplishing the purposes of this Mortgage.

(e) If any action or proceeding shall be instituted to evict Mortgagor, to recover possession of the Mortgaged Property or any part thereof, or to accomplish any other purpose which would materially affect this Mortgage or the Mortgaged Property, Mortgagor will immediately, upon service of notice thereof, deliver to Mortgagee a true copy of each petition, summons, complaint, notice of motion, order to show cause, and any other process, pleadings and papers, however designated, served in any such action or proceeding.

7. CHANGES AND ALTERATIONS.

(a) Additions and Alterations. Mortgagor shall not make any material alterations to the Mortgaged Property, other than as contemplated by the issuance of the Bonds and as may otherwise be permitted by Section 8(c) hereof, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed. Prior to making any material additions to the Mortgaged Property, other than as contemplated by the issuance of the Bonds, Mortgagor shall give written notice of same to Mortgagee, provided that no such addition shall adversely impair the value of the Mortgaged Property.

UNOFFICIAL COPY

(b) No Demolition. Further, except as contemplated by the issuance of the Bonds, Mortgagor shall not demolish, or cause or permit to be demolished, any of the Improvements now or hereafter constituting part of the Mortgaged Property without first obtaining the prior written consent of Mortgagee. Mortgagor shall give notice to Mortgagee not less than ten business days prior to any proposed demolition of any revenue producing portion of the Mortgaged Property which is not being replaced promptly upon completion of demolition.

(c) Obsolescence. So long as no Event of Default exists hereunder, and pursuant to Section 4 hereof, Mortgagor may, at any time and from time to time, remove and dispose of, or permit to be removed and disposed of, any equipment or other personal property now or hereafter constituting part of the Mortgaged Property which, in the reasonable opinion of Mortgagor, becomes inefficient, obsolete, worn out, unfit for use or no longer useful in the operation of the Mortgaged Property or the business conducted thereon, provided Mortgagor promptly replaces, or causes to be replaced, any of such equipment or other personal property that may be required in the reasonable judgment of the Mortgagor in the continued operation of the Mortgaged Property or the business conducted thereon with an item of similar function with a value at least equal to that of the replaced item and free from any lease, lien, title retention, or security interest or other encumbrance, other than Permitted Encumbrances. By such removal and replacement, Mortgagor shall be deemed to have subjected such replacement item to the lien and security interest of this Mortgage. If any equipment or other item of personal property which becomes inefficient, obsolete, worn out, unfit for use or no longer useful in the operation of the Mortgaged Property or the business conducted thereon shall be removed and disposed of in compliance herewith, the proceeds of a sale, if any, may be retained by Mortgagor.

(d) Restrictive Covenants. Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction or agreement materially changing the uses which may be made of the Mortgaged Property or any part thereof without the express written consent of Mortgagee.

8. COVENANTS AS TO CORPORATE EXISTENCE, MAINTENANCE OF PROPERTIES, AND SIMILAR MATTERS; RIGHT OF CONTEST.

The Mortgagor hereby covenants to:

(a) Corporate Existence. Except as otherwise expressly provided herein, (i) preserve its corporate or other separate legal existence, (ii) preserve all its rights and licenses to the extent necessary or desirable in the operation of its business and affairs and (iii) be qualified to do business and conduct its affairs in each jurisdiction where its ownership of Property or the conduct of its business or affairs requires such qualification; provided, however, that nothing herein contained shall be construed to obligate the Mortgagor to retain, preserve or keep in effect the rights, licenses or qualifications no longer used or, in the judgment of its Governing Body, useful in the conduct of its business.

(b) Not-for-Profit Status. To remain a not-for-profit corporation throughout the term of this Mortgage.

UNOFFICIAL COPY

(c) Lawful Purposes. At all times use its Mortgaged Property only in furtherance of its lawful corporate purposes and cause its business to be carried on and conducted and its Property and each part thereof to be maintained, preserved and kept in good repair, working order and condition and in as safe condition as its operations will permit and make all necessary and proper repairs (interior and exterior, structural and non-structural, ordinary as well as extraordinary and foreseen as well as unforeseen), renewals and replacements thereof so that its operations and business shall at all times be conducted in an efficient, proper and advantageous manner; provided, however, that nothing herein contained shall be construed (i) to prevent it from ceasing to operate any portion of its Property, if in its reasonable judgment (evidenced, in the case of such a cessation other than in the ordinary course of business, by a determination by its Governing Body) it is advisable not to operate the same, or if it intends to sell or otherwise dispose of the same, and within a reasonable time endeavor to effect such sale or other disposition, or (ii) to obligate it to retain, preserve, repair, renew or replace any Property, leases, rights, privileges or licenses no longer used or, in the judgment of its Governing Body, useful in the conduct of its business; provided, however, that the Mortgagor shall maintain its primary purpose as the provision of acute care hospital services and shall not change such purpose without the written consent of the Mortgagee. Mortgagor shall refrain from, and shall not permit, the commission of waste in or about the Mortgaged Property.

(d) Payment of Impositions. Pay or cause to be paid: (i) all taxes, levys, assessments and charges on account of the use, occupancy or operation of its Property, including but not limited to all sales, use, occupation, real and personal property taxes, all permit and inspection fees, occupation and license fees and all water, gas, electric, light, power or other utility charges assessed or charged on or against its Property or on account of its use or occupancy thereof or the activities conducted thereon or therein; and (ii) all taxes, assessments and impositions, general and special, ordinary and extraordinary, of every name and kind, which shall be taxed, levied, imposed or assessed during the term of this Mortgage upon all or any part of its Property, or its interest or the interest of the Mortgagee or either of them in and to its Property, or upon its interest or the interest of the Mortgagee or the interest of either of them in this Mortgage or the amounts payable hereunder or under the Note. The items set forth in (i) and (ii) shall be collectively referred to as "Impositions" and, individually, as "Imposition". If under applicable law any such Imposition may at the option of the taxpayer be paid in installments, the Mortgagor may exercise such option. The Mortgagor covenants and agrees that it will, at its own cost and expense, obtain exemption from all taxes and other charges referred to in this paragraph to the extent permitted under applicable law.

(e) Liens. Not create or permit to be created or remain and, at its cost and expense, promptly discharge or terminate all Liens on its Property and its revenues, receipts and accounts, other than Permitted Encumbrances.

(f) Compliance with Laws. At its sole cost and expense, promptly comply with all present and future laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court and the officers thereof which may be applicable to its or any of its affairs, business, operations and Property, any part thereof, any of the streets, alleys, passageways, sidewalks, curbs, gutters, vaults and vault spaces adjoining any of its Property or any part thereof or to the use or manner

10117716

UNOFFICIAL COPY

of use, occupancy or condition of any of its Property or any part thereof, if the failure to so comply would have a material adverse effect on the business or operations of the Mortgagor.

(g) Discharge of Obligations. Promptly pay or otherwise satisfy and discharge all of its obligations and Indebtedness, including, but not limited to, all amounts owed hereunder and under the Note, and all demands and claims against it as and when the same become due and payable.

(h) Compliance with Liens. At all times comply with all terms, covenants and provisions of any Liens at such time existing upon its Property or any part thereof or securing any of its Indebtedness, if the failure to so comply would have, in the reasonable judgment of the Mortgagor, a material adverse effect on the business or operations of the Mortgagor.

(i) Licenses, Accreditations, Etc. Procure and maintain all necessary licenses and permits and maintain accreditation of its hospital Facilities (other than those not accredited as of the date of this Mortgage) by the Joint Commission on Accreditation of Health Care Organizations and the status of its health care Facilities (other than those not currently having such status) as providers of health care services eligible for payment under those third-party payment programs which the Governing Body of the Mortgagor determines is appropriate; provided, however, that the Mortgagor need not comply with this paragraph if and to the extent that its Governing Body shall have determined in good faith, as evidenced by a resolution, that such procurement and maintenance is not in such Mortgagor's best interests and that lack of such procurement and maintenance would not materially impair its ability to pay its Indebtedness, including, but not limited to, all amounts owed hereunder and under the Note, when due.

(j) Tax-Exempt Organization. So long as this Mortgage shall remain in force and effect the Mortgagor shall take no action or suffer any action to be taken by others, including any action which would result in the alteration or loss of its status as a Tax-Exempt Organization, or which could result in the interest on the Bonds becoming subject to federal income taxation.

(k) Private Inurement. The Mortgagor shall not distribute any of its revenues, income or profits, whether realized or unrealized, to any of its members, directors or officers or allow the same to inure to the benefit of any private person, association or corporation, other than for the lawful corporate purposes of the Mortgagor; provided, however, that the Mortgagor may pay to any Person or corporation the value of any service or product performed for or supplied to the Mortgagor by such Person.

(l) Right to Contest. The Mortgagor shall not be required to pay any Imposition referred to herein above, to remove any Lien required to be removed under this Mortgage, pay or otherwise satisfy and discharge its obligations, Indebtedness (other than amounts owed hereunder and under the Note), demands and claims against it or to comply with any Lien, law, ordinance, rule, order, decree, decision, regulation or requirement referred to in this Section, so long as the Mortgagor shall contest, in good faith and at its cost and expense, in its own name and behalf, the amount or validity thereof, in an appropriate manner or by appropriate proceedings which shall operate during the pendency thereof to prevent the collection of or other realization upon the Imposition, obligation, Indebtedness, demand, claim or Lien so contested, and the sale, forfeiture,

10117716

UNOFFICIAL COPY

or loss of its Property or any part thereof, provided, that, unless a bond is posted in an amount reasonably satisfactory to the Mortgagee, no such contest shall subject the Mortgagee to the risk of any liability. While any such matters are pending, the Mortgagor shall not be required to pay, remove or cause to be discharged the Imposition, obligation, Indebtedness, demand, claim or Lien being contested unless the Mortgagor agrees to settle such contest. Each such contest shall be promptly prosecuted to final conclusion (subject to the right of the Mortgagor to settle such contest), and in any event the Mortgagor will save the Mortgagee harmless from and against all losses, judgments, decrees and costs (including attorneys' fees and expenses in connection therewith) as a result of such contest and will, promptly after the final determination of such contest or settlement thereof, pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable therein, together with all penalties, fines, interests, costs and expenses thereon or incurred in connection therewith. The Mortgagor shall give the Mortgagee prompt written notice of any such contest. The Mortgagor hereby waives, to the extent permitted by law, any right which it may have to contest this Mortgage and the Note.

Any sums paid by Mortgagee on account of Impositions shall constitute additional Liabilities secured by this Mortgage, shall bear interest at a rate equal to the prime rate of the Bond Trustee plus two per cent (2%) per annum (hereinafter referred to as the "Default Rate") from the date of payment and shall become immediately due and owing to Mortgagee on demand.

If the Mortgagee shall notify the Mortgagor that, in its reasonable opinion, by nonpayment of any of the foregoing items the Mortgaged Property or any substantial part thereof will be subject to imminent loss or forfeiture, then the Mortgagor shall promptly pay all such unpaid items and cause them to be satisfied and discharged.

9. INSURANCE.

(a) General. The Mortgagor shall maintain, or cause to be maintained at its sole cost and expense, insurance or self-insurance with respect to the Mortgaged Property, the operation thereof and its business against such casualties, contingencies and risks (including but not limited to public liability and employee dishonesty) and in amounts not less than is customary in the case of corporations engaged in the same or similar activities and similarly situated and as is adequate to protect the Mortgaged Property and such operations. The Mortgagor will annually, at the same time it furnishes to the Mortgagee the financial statements required pursuant to Section 13 hereof, deliver to the Mortgagee an Officer's Certificate certifying that such insurance is in amounts not less than is customary in the case of corporations engaged in the same or similar activities and similarly situated and is adequate to protect the Mortgaged Property and operations of the Mortgagor. In addition, the Mortgagor shall cause such Officer's Certificate to be accompanied at least once every three years with a written report of an Insurance Consultant concurring in such certification.

(b) Benefit. Mortgagor may effect for its own account or permit to be effected, any insurance not required under the provisions of Section 9 hereof, but any insurance effected, or caused to be effected, by Mortgagor on the Mortgaged Property, whether or not required under this Mortgage, shall be for the benefit of Mortgagee and Mortgagor, as their interests may appear,

UNOFFICIAL COPY

and shall be subject to the provisions of this Mortgage. Mortgagee shall be named in the standard mortgagee clause in such policies required by this Section 9, and such insurance shall be for the benefit of Mortgagor and Mortgagee, as their interests may appear.

(c) Right of Mortgagee. If Mortgagor shall fail to keep, or cause to be kept, the Mortgaged Property insured in accordance with the requirements of this Section 9, Mortgagee shall have the right, at its option and in addition to any other remedies available to it under this Mortgage, to provide for such insurance and pay the premiums thereon, and any amounts paid thereon by Mortgagee shall constitute additional Liabilities secured by this Mortgage, shall bear interest at the Default Rate from the date of payment, and shall become immediately due and owing to Mortgagee on demand.

(d) Certificates of Insurance. Mortgagor shall deliver, or cause to be delivered, to Mortgagee certificates of coverage, evidence of payment of annual premiums, and in the case of insurance about to expire shall deliver, or cause to be delivered, certificates evidencing renewal or replacement policies or binders as to the issuance thereof not less than 14 days prior to their respective dates of expiration.

(e) Notice of Termination. All certificates of insurance to be furnished under this Mortgage shall be in form and with companies reasonably satisfactory to Mortgagee and shall include a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without 30 calendar days' prior written notice to Mortgagee. Whenever possible, Mortgagor shall seek to have waiver of subrogation endorsements added where applicable. Any or all of such insurance may be provided for under a blanket policy or policies carried by Mortgagor.

(f) Foreclosure. In the event of foreclosure of the lien of this Mortgage or any transfer or conveyance of the Mortgaged Property in extinguishment of the Liabilities secured by this Mortgage, all right, title and interest of Mortgagor in and to all insurance policies which have been secured in satisfaction of the requirements of this Section 9, and which are then in force, including but not limited to, all unearned premiums, and to all proceeds from such policies, shall pass to and vest in the new owner of that part of the Mortgaged Property covered by such insurance policies.

10. ESCROWS FOR IMPOSITIONS AND INSURANCE.

To assure the performance and discharge of Mortgagor's obligations pursuant to Sections 8 and 9 hereof, but not in lieu of such obligations, Mortgagor covenants and agrees that, at the option of Mortgagee and exercisable only upon an Event of Default, Mortgagor shall deposit with Mortgagee a sum as estimated by Mortgagee for funding an escrow for payment of Impositions against the Mortgaged Property, and for payment of premiums for all policies of insurance that are required hereby. Mortgagor shall, after exercise of such option by Mortgagee, deposit with Mortgagee sufficient funds (as estimated from time to time by Mortgagee) to permit Mortgagee to pay, at least 15 days prior to the due date thereof, the next maturing Impositions and premiums for all policies of insurance. If the amount so paid is not sufficient to pay such Impositions and insurance premiums when due, then after notification by Mortgagee, Mortgagor

UNOFFICIAL COPY

will deposit immediately with Mortgagee an amount sufficient to pay such Impositions and premiums. Mortgagee shall use amounts paid by Mortgagor under this Section 10 to pay such Impositions and insurance premiums in such manner and at such times as it may deem advisable; however, in no event shall Mortgagee be liable for any damages arising out of Mortgagee's manner or method of estimating or of making such payments. Mortgagee shall have no duty or liability to use its own funds to make payments hereunder or to inquire as to the existence, necessity for, or making of any protest of said Impositions. If there is a default under any of the provisions of this Mortgage resulting in a foreclosure sale of the Mortgaged Property, or if Mortgagee otherwise acquires the Mortgaged Property after default, Mortgagee is authorized and may, at its option, apply at the time of commencement of such proceedings, or at the time the Mortgaged Property is otherwise acquired, any funds then accumulated in such escrow account as a credit against any amount then remaining unpaid of any Liabilities secured by this Mortgage in such order and manner as Mortgagee may elect. No interest shall accrue or be allowed on any deposits made under the provisions of this Section 10. Mortgagee shall not be required to keep such deposits separate and apart, and may commingle such deposits with the general funds of Mortgagee. Mortgagee shall not be required to account for any profits or benefits derived from such deposits. In the event of transfer, sale or conveyance by Mortgagor of the Mortgaged Property with the prior approval of Mortgagee or effected by operation of law or by foreclosure of a subordinate lien, Mortgagor and Mortgagee hereby agree that all such deposits shall automatically, and without the necessity of notice or written assignment, be transferred and thereafter be held by Mortgagee for the account of the new owner of the Mortgaged Property, whether such new owner is a person or entity, and such deposits shall thereafter be used, applied and governed in accordance with the foregoing.

10117716

11. DAMAGE OR DESTRUCTION.

The Mortgagor agrees to notify the Mortgagee immediately in the case of the destruction of any Mortgaged Property or any portion thereof as a result of fire or other casualty, or any damage to such Mortgaged Property or portion thereof as a result of fire or other casualty, the Net Proceeds of which are estimated to exceed 5% of the Book Value of the Property, Plant and Equipment of the Mortgagor. Net Proceeds of any insurance relating to such damage or destruction not exceeding such amount may be paid directly to the Mortgagor. The Mortgagor covenants that it will expend an amount not less than the amount of such Net Proceeds within twelve months after the receipt thereof to (i) repair, replace or restore the damaged or destroyed Mortgaged Property, (ii) acquire or construct additional capital assets, or (iii) repay the principal portion of the Bonds.

In the event such Net Proceeds exceed the amount specified above, the Mortgagor shall within twelve (12) months after the date on which the Net Proceeds are finally determined elect by written notice of such election to the Mortgagee one of the following three options, subject to the approval of the Mortgagee (which approval may not be unreasonably withheld):

(a) Option A-Repair and Restoration. The Mortgagor may elect to replace, repair, reconstruct, restore or improve any of its Mortgaged Property or acquire additional Mortgaged Property. In such event an amount equal to the Net Proceeds of any insurance relating thereto

UNOFFICIAL COPY

shall be deposited with the Master Trustee, and the Mortgagor shall proceed forthwith to replace, repair, reconstruct, restore or improve its Mortgaged Property or to acquire additional Mortgaged Property and apply the Net Proceeds of any insurance relating to such damage or destruction received from the Master Trustee to the payment or reimbursement of the costs of such replacement, repair, reconstruction, restoration, improvement or acquisition. So long as the Mortgagor is not in default hereunder, any Net Proceeds of insurance relating to such damage or destruction received by the Master Trustee shall be released from time to time by the Master Trustee to the Mortgagor upon the receipt of:

(1) the Written Request of the Mortgagor specifying the expenditures made or to be made or the Indebtedness incurred in connection with such repair, reconstruction, restoration, improvement or acquisition and stating that such Net Proceeds, together with any other moneys legally available for such purposes, will be sufficient to complete such replacement, repair, reconstruction, restoration, improvement or acquisition; and

(2) the written approvals of such Written Request by the Mortgagee.

The Mortgagor agrees to apply any such Net Proceeds so received solely to the purposes specified in such Written Request.

It is further understood and agreed that in the event the Mortgagor shall elect this Option A, the Mortgagor shall complete the replacement, repair, reconstruction, restoration, improvement and acquisition of the Mortgaged Property, whether or not the Net Proceeds of insurance received by the Mortgagor for such purposes are sufficient to pay for the same.

(b) Option B-Prepayment of Bonds. The Mortgagor may elect to have all or a portion of the Net Proceeds payable as a result of such damage or destruction applied to the prepayment of the Bonds. In such event the Mortgagor shall, in its notice of election to the Mortgagee, direct the Master Trustee to apply such Net Proceeds, when and as received, to the prepayment of the Bonds.

(c) Option C-Partial Restoration and Partial Prepayment of Bonds. The Mortgagor may elect to have a portion of such Net Proceeds applied to the replacement, repair, reconstruction, restoration and improvement of its Mortgaged Property or the acquisition of additional Mortgaged Property with the remainder of such Net Proceeds to be applied to prepay Bonds, in which event such Net Proceeds to be used for replacement, repair, reconstruction, restoration, improvement and acquisition shall be applied as set forth in subparagraph (a) of this Section and such Net Proceeds to be used for prepayment of the Bonds shall be applied as set forth in subparagraph (b) of this Section.

12. CONDEMNATION.

The Mortgagee shall cooperate fully with the Mortgagor in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Mortgaged Property or any part thereof. The Mortgagor hereby irrevocably assigns to the Mortgagee all of its right, title and interest in and to any Net Proceeds of any award, compensation or damages (hereinafter

10117716

UNOFFICIAL COPY

referred to as an "award"), payable in connection with any such condemnation or taking. Such Net Proceeds shall be initially paid to the Master Trustee for disbursement or use as hereinafter provided. If such Net Proceeds do not exceed 5% of the Book Value of the Property, Plant and Equipment of the Mortgagor, such Net Proceeds shall upon the request of the Mortgagor be paid by the Master Trustee to the Mortgagor. The Mortgagor covenants that it will expend an amount not less than the amount of such Net Proceeds within twelve months of the receipt thereof to (i) restore, replace or repair the condemned Mortgaged Property, (ii) acquire or construct additional capital assets, or (iii) repay the Bonds.

In the event such Net Proceeds exceed the amount specified above, the Mortgagor shall within twelve (12) months after the date on which the Net Proceeds are finally determined elect by written notice of such election to the Mortgagee one of the following three options, subject to the approval of the Mortgagee (which approval may not be unreasonably withheld):

(a) Option A-Repairs and Improvements. The Mortgagor may elect to use the Net Proceeds of the award made in connection with such condemnation or taking for restoration or replacement of or repairs and improvements to its Mortgaged Property or the acquisition of additional Mortgaged Property. In such event, so long as the Mortgagor is not in default hereunder, the Mortgagor shall have the right to receive such Net Proceeds from the Master Trustee from time to time upon the receipt by the Master Trustee of:

(1) the Written Request of the Mortgagor specifying the expenditures made or to be made or the Indebtedness incurred in connection with such restoration, replacement, repairs, improvements and acquisitions and stating that such Net Proceeds, together with any of the moneys legally available for such purposes, will be sufficient to complete such restoration, replacement, repairs, improvements and acquisition; and

(2) the written approvals of such Written Request by the Mortgagee.

The Mortgagee agrees to apply any such Net Proceeds so received solely to the purposes specified in such Written Request.

(b) Option B-Prepayment of Bonds. Subject to the obligations of the Mortgagor under Section 1 hereof, the Mortgagor may elect to have such Net Proceeds payable as a result of such condemnation or taking applied to the prepayment of the Bonds. In such event the Mortgagor shall, in its notice of election to the Mortgagee, direct the Master Trustee to apply such Net Proceeds when and as received, to the prepayment of the Bonds.

(c) Option C-Partial Restoration and Partial Prepayment of Bonds. The Mortgagor may elect to have a portion of such Net Proceeds applied to the repair, replacement, restoration and improvement of its Mortgaged Property or the acquisition of additional Mortgaged Property, with the remainder of such proceeds to be applied to the prepayment of Bonds, in which event such Net Proceeds to be used for repair, replacement, restoration, improvement and acquisition shall be applied as set forth in subparagraph (a) of this Section and such Net Proceeds to be used for prepayment of the Bonds shall be applied as set forth in subparagraph (b) of this Section.

UNOFFICIAL COPY

13. FINANCIAL STATEMENTS, ETC.

The Mortgagor covenants that it will keep or cause to be kept proper books of records and accounts in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the Mortgagor in accordance with generally accepted principles of accounting consistently applied, and will furnish to the Mortgagee:

(a) Quarterly Financials. As soon as practicable after they are available but in no event more than 60 days after the expiration of each of the first three quarterly fiscal periods of each fiscal year of the Mortgagor, a combined and a combining statement of revenues and expenses and changes in fund balances of the Mortgagor during such period, and a combined and a combining balance sheet as of the end of each such quarterly fiscal period, all in reasonable detail and certified, subject to year-end adjustment, by the chief financial officer of the Mortgagor.

(b) Annual Audit. As soon as practicable after they are available, but in no event more than 150 days after the last day of each fiscal year of the Mortgagor, a financial report for such fiscal year certified by Ernst & Young, or a firm of nationally recognized independent certified public accountants selected by the Mortgagor and reasonably satisfactory to the Mortgagee covering the operations of the Mortgagor for such fiscal year and containing a combined and a combining balance sheet of the Mortgagor as of the end of such fiscal year and a combined and a combining statement of changes in fund balances and changes in financial position of the Mortgagor for such fiscal year and a combined and a combining statement of revenues and expenses for such fiscal year of the Mortgagor, showing in each case in comparative form the financial figures for the preceding fiscal year, together with a separate written statement of the accountants preparing such report containing a calculation of the Mortgagor's Historical Debt Service Coverage Ratio for said fiscal year and a statement that such accountants have obtained no knowledge of any default by the Mortgagor in the fulfillment of any of the terms, covenants, provisions or conditions of this Mortgage or the Bond Indenture, Loan Agreement or Master Indenture, or if such accountants shall have obtained knowledge of any such default or defaults, they shall disclose in such statement the default or defaults and the nature thereof (but such accountants shall not be liable directly or indirectly to anyone for failure to obtain knowledge of any default).

(c) Certificates. At the time of delivery of the financial report referred to in Subsection (b) above, a certificate of the chief financial officer of the Mortgagor, stating that the Mortgagor has made a review of its activities during the preceding fiscal year of the Mortgagor for the purpose of determining whether or not the Mortgagor has complied with all of the terms, provisions and conditions of this Mortgage and that Mortgagor has kept, observed, performed and fulfilled each and every covenant, provision and condition of this Mortgage on its part to be performed and is not in default in the performance or observance of any of the terms, covenants, provisions or conditions hereof, or if Mortgagor shall be in default such certificate shall specify all such defaults and the nature thereof.

(d) Additional Information. Such additional information as the Mortgagee may reasonably request concerning the Mortgagor in order to enable the Mortgagee to determine

10117716

UNOFFICIAL COPY

whether the covenants, terms and provisions of this Mortgage have been complied with by the Mortgagor and for that purpose all pertinent books, documents and vouchers relating to the business, affairs and Property of the Mortgagor shall at all times during regular business hours be open to the inspection of the Mortgagee or its agent (who may make copies of all or any part thereof) as shall from time to time be designated and compensated by the Mortgagee.

The Mortgagor shall give prompt written notice of a change of accountants by the Mortgagor to the Mortgagee. The notice shall state: (i) the effective date of such change; (ii) whether there were any unresolved disagreements with the former accountants on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which the accountants claimed would have caused them to refer to the disagreement in a report on the disputed matter, if it was not resolved to their satisfaction; and (iii) such additional information relating thereto as the Mortgagee may reasonably request.

14. ENVIRONMENTAL MATTERS.

Mortgagor represents and warrants to and covenants with Mortgagee as follows:

(a) Neither Mortgagor nor any lessee or other user of the Mortgaged Property will use, generate, manufacture, produce, store, release, discharge or dispose of, on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous Substance or allow any other person or entity to do so except in material compliance with Environmental Laws.

(b) Mortgagor shall keep and maintain the Mortgaged Property in material compliance with, and shall not cause or permit the Mortgaged Property to be in violation of any Environmental Law (as hereinafter defined) or allow any other person or entity to do so.

(c) Mortgagor shall give prompt written notice to Mortgagee of:

(1) any proceeding or inquiry by any governmental authority, whether federal, state or local, with respect to the presence of any Hazardous Substance on the Mortgaged Property or the migration thereof from or to other property;

(2) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance;

(3) Mortgagor's discovery of any occurrence or condition on the Mortgaged Property or on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Property under any Environmental Law; and

(4) The discovery of an environmental problem or liability or spill, leak, release or other unauthorized discharge of any Hazardous Substance in, on or about the Mortgaged Property.

10117716

UNOFFICIAL COPY

(d) Mortgagee shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Environmental Law and have its attorneys' fees in connection therewith paid by Mortgagor.

(e) Mortgagor shall protect, indemnify and hold harmless Mortgagee, its directors, officers, employees, agents, successors and assigns from and against any and all loss, damage, cost, expense or liability (including reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of a Hazardous Substance on, under or about the Mortgaged Property including without limitation (i) all foreseeable consequential damages; and (ii) the costs of any required or necessary repair, cleanup or detoxification of the Mortgaged Property and the preparation and implementation of any closure, remedial or other required plans. This indemnity shall survive the reconveyance of the lien of this Mortgage, or the extinguishment of the lien by foreclosure or action in lieu thereof, and this covenant shall survive such reconveyance or extinguishment.

(f) Mortgagor shall, at its own cost and expense, take all actions (to the extent and at the time or from time to time) as shall be necessary or advisable for the clean-up of the Mortgaged Property, including all removal, containment and remedial actions ("Remedial Work") in accordance with all applicable Environmental Laws (and in all events in a manner reasonably satisfactory to Mortgagee), and shall further pay or cause to be paid at no expense to Mortgagee all clean-up, administrative, and enforcement costs of applicable governmental agencies or the parties protected by such Environmental Laws which may be asserted against the Mortgaged Property, the owner thereof or a lienholder secured thereby.

For purposes of this Section 14, the following terms shall have the meanings as set forth below:

(g) "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under or about the Mortgaged Property, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. Section 9601 et seq., and the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901 et seq.

(h) The term "Hazardous Substance" shall include without limitation:

(1) those substances included within the definition of "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in CERCLA, RCRA and the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., or under applicable Illinois law and in the regulations promulgated pursuant to said laws;

(2) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

UNOFFICIAL COPY

(3) such other substances, materials and wastes which are to become regulated under applicable local, state and federal law, or which are classified as hazardous or toxic under federal, state or local laws or regulations; and

(4) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321), or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (E) flammable explosives, or (F) radioactive materials.

15. RATES AND CHARGES.

The Mortgagor covenants and agrees to operate its Mortgaged Property on a revenue producing basis and to charge such fees and rates for its Mortgaged Property and services and to exercise such skill and diligence as to provide income from its Property together with other available funds sufficient to pay promptly all payments of principal and interest on its Indebtedness, all expenses of operation, maintenance and repair of its Property and all other payments required to be made by it hereunder to the extent permitted by law. The Mortgagor further covenants and agrees that it will from time to time as often as necessary and to the extent permitted by law, revise its rates, fees and charges in such manner as may be necessary or proper to comply with the provisions of this Section; provided that the Mortgagor shall not be required to follow any recommendation to admit or treat any patient for the performance of any abortion, sterilization, euthanasia or other medical or surgical services which the Governing Body of the Mortgagor determines in good faith to be contrary to the Ethical and Religious Directives or similar guidelines promulgated by the National Council of Catholic Bishops if the governing body of the Mortgagor determines in good faith and a Consultant concurs in writing that failure to follow such recommendation will not result in the Historical Debt Service Coverage Ratio of the Mortgagor to be less than 1.10:1 during the period covered by such Consultant's report and recommendations, and such Historical Debt Service Coverage Ratio was not less than 1.10:1 during the immediately preceding fiscal year of the Mortgagor.

If in any Fiscal Year the Historical Debt Service Coverage Ratio of the Mortgagor is less than 1.20:1, then the Mortgagee may require the Mortgagor at Mortgagor's expense to retain a Consultant to make recommendations with respect to the rates, fees and charges of the Mortgagor and the Mortgagor's methods of operation and other factors affecting its financial condition in order to increase such Historical Debt Service Coverage Ratio to at least 1.20:1. Such Consultant shall be selected by the Mortgagor from a list of Consultants which are acceptable to the Mortgagee.

A copy of the Consultant's report and recommendations, if any, shall be filed with the Mortgagor and the Mortgagee. The Mortgagor shall follow each recommendation of the Consultant to the extent feasible (as determined by the Governing Body of the Mortgagor) as permitted by law. This Section shall not be construed to prohibit the Mortgagor from serving indigent patients to the extent required for it to continue its qualification as a Tax-Exempt Organization or from serving any other class or classes of patients without charge or at reduced

10117716

UNOFFICIAL COPY

rates so long as such service does not prevent the Mortgagor from satisfying the other requirements of this Section.

The foregoing provisions notwithstanding, if in any Fiscal Year the Historical Debt Service Coverage Ratio is less than 1.20:1 the Mortgagor shall not be obligated to retain a Consultant to make such recommendations if: (A) there is filed with the Mortgagee a written report addressed to it of a Consultant (which report, including without limitation, the scope, form, substance and other aspects thereof, is reasonably acceptable to the Mortgagee) which contains an opinion of such Consultant that applicable laws or regulations have prevented the Mortgagor from generating Income Available for Debt Service during such Fiscal Year in an amount sufficient to cause the Historical Debt Service Coverage Ratio for such Fiscal Year to equal or exceed 1.20:1 and, if requested by the Mortgagee, such report is accompanied by a concurring opinion of Independent Counsel (which Counsel and opinion, including without limitation the scope, form, substance and other aspects thereof, are reasonably acceptable to the Mortgagee) as to any conclusion of law supporting the opinion of such Consultant; (B) the Mortgagor has, in the opinion of the Consultant, generated the maximum amount of Revenues possible given such laws or regulations; and (C) the Historical Debt Service Coverage Ratio for such Fiscal Year was at least 1.10:1. The Mortgagor shall not be required to cause the Consultant's report referred to in this paragraph to be prepared more frequently than once every two Fiscal Years if at the end of the first of such two Fiscal Years the Mortgagor provides to the Mortgagee an opinion of Independent Counsel (which Counsel and opinion, including without limitation, the scope, form, substance and other aspects thereof, are reasonably acceptable to the Mortgagee) to the effect that the applicable laws and regulations underlying the Consultant's report delivered in respect of the previous Fiscal Year have not changed in any material way.

Notwithstanding anything to the contrary herein whatsoever, failure by the Mortgagor to maintain an Historical Debt Service Coverage Ratio of at least 1.10:1 as of and at the end of any calendar month subsequent to May 31, 2001 shall constitute an Event of Default hereunder. The voluntary prepayment of principal on any outstanding Indebtedness shall not be included in the calculation of the Historical Debt Service Coverage Ratio.

16. CALCULATION OF DEBT SERVICE COVERAGE.

The various calculations of the amount of Indebtedness of the Mortgagor, the amortization schedule of such Indebtedness and the debt service payable with respect to such Indebtedness required under certain provisions of this Mortgage shall be made in a manner consistent with that adopted in this Section 16.

If the aggregate principle amount of Short-Term, Balloon or Put Indebtedness, as the case may be, to be issued, together with the outstanding principal amount of Short-Term, Balloon and Put Indebtedness already incurred, does not exceed 15% of the Revenues of the Mortgagor for the most recent Fiscal Year for which combined financial statements reported upon by independent certified public accountants are available, it shall be assumed that such Short-Term, Balloon or Put Indebtedness, as the case may be, bears interest at the Projected Rate and is amortized from the date of issuance on a level debt service basis over a 20 year period. If the aggregate principal amount of Short-Term, Balloon or Put Indebtedness, as the case may be, to

UNOFFICIAL COPY

be issued, together with the outstanding principal amount of Short-Term, Balloon and Put Indebtedness already incurred, exceeds 15% of the Revenues of the Mortgagor for the most recent Fiscal Year for which combined financial statements reported upon by independent certified public accountants are available and there is in effect at the time such Short-Term, Balloon or Put Indebtedness, as the case may be, is incurred a binding commitment by a financial institution generally regarded as responsible, which commitment and institution are acceptable to the Mortgagee to provide financing sufficient to pay such Short-Term Indebtedness at maturity, to pay the principal amount of such Balloon Indebtedness coming due during each consecutive twelve month period in which twenty-five percent (25%) or more of the original principal amount of such Balloon Indebtedness comes due, or to pay such Put Indebtedness on any Put Date occurring during the term of such commitment, as the case may be, it shall be assumed that such Short-Term, Balloon or Put Indebtedness, as the case may be, bears interest at the Projected Rate and is amortized from its date of issuance on a level annual debt service basis over a 20 year period.

If the Mortgagor establishes in an Officer's Certificate filed with the Mortgagee an amortization schedule for Balloon Indebtedness, which amortization schedule provides for payments of principal and interest for each Fiscal Year which, taking into account the principal payments previously required by such amortization schedule, are not less than the amounts required to make any actual payments required to be made in such Fiscal Year by the terms of such Balloon Indebtedness and (b) the Mortgagor agrees in such Officer's Certificate to deposit each Fiscal Year with a bank or trust company (pursuant to an agreement between the Mortgagor and such bank or trust company, which agreement shall be satisfactory in form and substance to the Mortgagee) the amount of principal shown on such amortization schedule net of any amount of principal actually paid on such Balloon Indebtedness during such Fiscal Year (other than from amounts on deposit with such bank or trust company) which deposit shall be made prior to any such required actual payment during such Fiscal Year if the amounts so on deposit are intended to be the source of such actual payments, such Balloon Indebtedness shall be deemed payable in accordance with such amortization schedule and shall not be considered to be Balloon Indebtedness for purposes of the preceding paragraph. If the option of the holder to require that Put Indebtedness be paid, purchased or redeemed prior to its stated maturity date has expired as of the date of calculation, such Put Indebtedness shall be deemed payable in accordance with its terms and shall not be considered to be Put Indebtedness for purposes of the preceding paragraph.

In determining the amount of debt service payable on Indebtedness in the course of the various calculations required under certain provisions of this Mortgage, if the terms of the Indebtedness being considered are such that interest thereon for any future period of time is expressed to be calculated at a varying rate per annum, a formula rate or a fixed rate per annum based on a varying index, then for the purpose of making such determination of debt service, interest on such Indebtedness for such period (the "Determination Period") shall be computed by assuming that the rate of interest applicable to the Determination Period is equal to the rate of interest (calculated in the manner in which the rate of interest for the Determination Period is expressed to be calculated) which would have been in effect on a date specified by the Mortgagor, which date shall be a date occurring within the forty-five day period next preceding the date on which such calculation is made.

UNOFFICIAL COPY

No debt service shall be deemed payable with respect to Commitment Indebtedness until such time as funding occurs under the commitment which gave rise to such Commitment Indebtedness. From and after such funding, the amount of such debt service shall be calculated in accordance with the actual amount required to be repaid on such Commitment Indebtedness and the actual interest rate and amortization schedule applicable thereto. No Additional Indebtedness shall be deemed to arise when any funding occurs under any such commitment or any such commitment is renewed upon terms which provide for substantially the same terms of repayment of amounts disbursed pursuant to such commitment as obtained prior to such renewal.

No debt service shall be deemed payable with respect to Cross-over Refunded Indebtedness except to the extent paid by the Mortgagor.

17. PERFORMANCE BY MORTGAGEE.

If Mortgagor shall default in the payment of any Imposition levied or assessed against the Mortgaged Property; in the payment of insurance premiums; in the procurement of insurance coverage; in the delivery to Mortgagee of the insurance policies required hereunder; in the performance of or observance of any other obligation hereunder, including, but not limited to, those covering preservation of the Mortgaged Property and prevention of waste thereto and the performance of the Remedial Work described in Section 14 hereof, then Mortgagee, at its option, on three (3) business days' notice, may, but shall not be obligated to, perform, observe or cure the same, and any payments made by Mortgagee which are incurred for costs or expenses in connection therewith shall be an advance secured hereby and shall bear interest from the date of such advance at the Default Rate, and shall, at the option of Mortgagee, be repayable immediately upon demand. Should Mortgagor fail to repay Mortgagee any such advance with interest as herein provided immediately after demand for repayment of the same, Mortgagee may, at its option, declare all sums secured by this Mortgage immediately due and payable, and avail itself of any and all remedies provided herein; and neither the exercise nor the failure to exercise the foregoing options by Mortgagee shall be deemed a waiver or release of its right thereafter to declare a default hereunder by reason of said failure of Mortgagor to keep, observe or perform its obligations hereunder. In the event Mortgagee elects to make any such advance, Mortgagee shall be subrogated respectively to the rights of the holder of any lien or claim, or to the rights of any taxing authority. Mortgagee shall be the sole judge of the legality, validity and priority of any matter for which any advance is made; of the necessity for any such actions; of the amount necessary to be paid in connection with or in satisfaction thereof; and of the necessity of making any such advance. Mortgagee is hereby empowered to enter, and to authorize its agents, workmen and others to enter upon the Mortgaged Property or any part thereof for the purpose of performing, observing or curing any such defaulted obligation without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

18. INDEMNIFICATION.

The Mortgagor will pay, and will protect, indemnify and save the Mortgagee, its officers, trustees, employees and agents harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and expenses of the Mortgagor and the

UNOFFICIAL COPY

Mortgagee), causes of action, suits, claims, demands and judgments of whatsoever kind and nature (including those arising or resulting from any injury to or death of any person or damage to the Mortgaged Property) arising from or in any manner directly or indirectly growing out of or connected with the following:

(a) the use, non-use, condition or occupancy of any of the Mortgaged Property, any repairs, construction, alterations, renovation, relocation, remodeling and equipping thereof or thereto or the condition of any of such Mortgaged Property including adjoining sidewalks, streets or alleys and any equipment or property at any time located on such Mortgaged Property or used in connection therewith but which are not the result of the negligence of the Mortgagee or its agents;

(b) violation of any agreement, warranty, covenant or condition of this Mortgage, except by the Mortgagee;

(c) violation of any contract, agreement or restriction by the Mortgagor relating to its Mortgaged Property, which shall have existed at the commencement of this Mortgage;

(d) violation of any law, ordinance, regulation or court order affecting any Mortgaged Property or the ownership, occupancy or use thereof; and

(e) any statement or information concerning the Mortgagor, its officers and members or its Property, contained in any official statement or other offering document that is untrue or incorrect in any material respect, and any omission from such official statement or other offering document of any statement or information which should be contained therein for the purpose for which the same is used or which is necessary to make the statements therein concerning the Mortgagor, its officers and members and its Property not misleading in any material respect, provided that the official statement or other offering document has been approved by the Mortgagor.

Such indemnity shall extend to each person, if any, who "controls" the Mortgagee as that term is defined in Section 15 of the Securities Act of 1933, as amended.

In the event of settlement of any litigation commenced or threatened such indemnity shall be limited to the aggregate amount paid under a settlement effected with the written consent of the Mortgagor.

The Mortgagee shall promptly notify the Mortgagor in writing of any claim or action brought against the Mortgagee or any controlling person, as the case may be, in respect of which indemnity may be sought against the Mortgagor, setting forth the particulars of such claim or action, and the Mortgagor will assume the defense thereof, including the employment of counsel reasonably satisfactory to the Mortgagee or such controlling person, as the case may be, and the payment of all expenses. The Mortgagee or any such controlling person, as the case may be, may employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall not be payable by the Mortgagor unless such employment has been specially authorized by the Mortgagor.

UNOFFICIAL COPY

For purpose of this Section 18, references to the "Mortgagee" shall be deemed to include not only the Mortgagee but also all of the members of the Obligated Group and their respective controlling persons, officers, trustees, employees and agents.

19. RESERVED.

20. EVENTS OF DEFAULT.

The occurrence of any one or more of the following constitutes an event of default hereunder (each of which is herein called an "Event of Default"):

(a) Failure by Mortgagor to pay any amount required to be paid pursuant to the Note, the Bond Documents, or this Mortgage, including, but not limited to, the payment of any Imposition, at the time required to be paid subject to any applicable grace periods, upon demand; or

(b) Failure by Mortgagor to maintain an Historical Debt Service Coverage Ratio of at least 1.10:1.00 as of and at the end of any calendar month subsequent to May 31, 2001; or

(c) If any representation or warranty made or deemed made by Mortgagor herein or in any certificate, document or financial or other statement furnished to Mortgagee at any time under or in connection herewith or in any other security agreement, assignment, or other agreement, document or instrument of any kind now or hereafter existing as security for, executed in connection with, or related to the Liabilities ("Other Security Instruments") shall prove to have been incorrect in any material respect on or as of the date made or deemed made; or

(d) If Mortgagor shall default in any material respect in the observance or performance of any covenant or agreement contained herein or in any of the Other Security Instruments and, except as otherwise provided in Section 20(a) or 20(b) hereof, such default shall not have been remedied within 60 days after the date written notice thereof shall have been given to Mortgagor by Mortgagee; provided that if such default cannot be cured during such 60 days, but the Mortgagor certifies in writing that it is curable, no Event of Default shall occur so long as Mortgagor is diligently proceeding to cure such default; provided further, that in no event shall such grace period extend beyond 120 days from the date such notice was given; or

(e) If an Event of Default, as therein defined, shall have occurred pursuant to any provision of the Master Indenture, the Bond Indenture, the Loan Agreement or the Bonds; or

(f) If the holder of any lien or security interest on the Mortgaged Property, other than Mortgagee (whether or not Mortgagee has consented to the existence of such lien or security interest) institutes or completes foreclosure or other proceedings for the enforcement of its remedies with respect to such lien or security interest; or

10117716

UNOFFICIAL COPY

(g) If any execution, attachment, sequestration or other writ is levied against the Mortgaged Property or any part thereof or against the assets of Mortgagor and is not discharged or stayed within 60 days after filing; or

(h) If Mortgagor abandons all or any material portion of the Mortgaged Property; or

(i) If default shall be made by Mortgagor as lessor under any lease affecting a material portion of the Mortgaged Property; or if Mortgagor shall fail to keep, observe or perform any material covenant, condition, restriction or agreement under any such lease; or

(j) If without Mortgagee's prior written consent which may be withheld in Mortgagee's sole discretion (i) Mortgagor shall convey title to, or beneficial interest in, or otherwise suffer or permit any equitable or beneficial interest in the Mortgaged Property to become vested in any person or persons, firm or corporation or other entity other than Mortgagor, (ii) allow any lien or security interest to attach to the Mortgaged Property for a period of more than fifteen days after Mortgagor has knowledge thereof other than the lien of this Mortgage (excluding taxes and assessment not yet due and payable), Permitted Encumbrances and liens which are being contested or stayed in accordance with the provisions of this Mortgage, (iii) any articles of agreement for deed or other installment contract for deed, title or beneficial interest or land contract in the Mortgaged Property are entered into, or (iv) any membership interest in Mortgagor is conveyed, transferred or hypothecated, in whole or in part; or

(k) If Mortgagor shall become insolvent, fail to pay its debts generally as they become due, voluntarily seek, consent to or acquiesce in the benefit or benefits of any Debtor Relief Law (hereinafter defined), or become a party to (or be made the subject of) any proceeding provided for by any Debtor Relief Law, other than as a creditor or claimant, that could suspend or otherwise adversely affect the rights of Mortgagee granted in any Other Security Instrument (unless, in the event such proceeding is involuntary, the petition instituting same is dismissed within 60 days of the filing of same). As used herein "Debtor Relief Law" means the bankruptcy Code of the United States of America and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, suspension of payments, or similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

21. REMEDIES ON DEFAULT.

(a) If an Event of Default occurs and is continuing hereunder, Mortgagee shall have the following rights and remedies:

(1) At the option of Mortgagee, the entire unpaid principal balance of the Note secured hereby, and all accrued and unpaid interest under the Note, and any other sums secured hereby shall be due and payable immediately and, thereafter, each of said amounts shall bear interest at the Default Rate. All costs and expenses incurred by, or on behalf of, Mortgagee (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any Event of Default by Mortgagor hereunder shall be immediately due and payable by Mortgagor and, thereafter, each of said amounts shall bear interest at the Default Rate. After any such Event of

UNOFFICIAL COPY

Default, Mortgagee may institute, or cause to be instituted, proceedings for the realization of its rights under this Mortgage, the Other Security Instruments and the Note.

(2) Mortgagee shall have the right to replace such of the management of Mortgagor as Mortgagee deems appropriate.

(3) Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to costs to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, guarantee policies, Torrens certificates and similar data and assurances with respect to title, as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property. All such expenditures and expenses shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the Default Rate from the date of expenditure until paid.

(4) Mortgagee personally, or by its agents or attorneys, may enter upon and take possession of the Mortgaged Property or any part thereof in accordance with applicable law and may remove Mortgagor and all other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto. Mortgagee shall be under no liability for or by reason of such entry, taking of possession, removal, holding, operation or management, except that any amounts so received shall be applied as hereinafter provided in this Section 21.

(5) Upon the bringing of any suit to foreclose this Mortgage or to enforce any other remedy available hereunder, Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor, or anyone claiming by, under or through Mortgagor, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Mortgaged Property and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may collect all income, rents, issues and profits accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise. Further, Mortgagor agrees that Mortgagee may be appointed the receiver of the Mortgaged Property.

(6) If, upon the occurrence and continuance of an Event of Default hereunder, the Mortgagee obtains a current appraisal of the Mortgaged Property prepared by an MAI appraiser mutually satisfactory to the Mortgagor and the Mortgagee and based upon an appraisal

10117716

UNOFFICIAL COPY

methodology mutually satisfactory to the Mortgagor and the Mortgagee, and otherwise in form and substance satisfactory to the Mortgagee in its sole discretion, demonstrating that the appraised value of such Mortgaged Property is less than Mortgagor's then outstanding Indebtedness, the Mortgagor shall grant to the Mortgagee a deed in lieu of foreclosure of the lien hereof.

(7) Mortgagee is hereby authorized and empowered to exercise any right available under this instrument, at law and in equity, including, but not limited to, the right, if any to extent permitted by law, to sell or cause to be sold at public auction the Mortgaged Property and to convey the same by the execution and delivery to the purchaser at such sale of good and sufficient deeds of conveyance in law, pursuant to the statute in such case made and provided.

(b) Mortgagor hereby waives the benefit of all appraisement, valuation, stay, extension, exemption or redemption laws or any so-called "Moratorium Laws" now existing or hereafter enacted. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Mortgagor hereby waives any and all rights of the redemption from sale to which it may be entitled under the laws of the State of Illinois, on behalf of Mortgagor and each and every person acquiring any interest in, or title to, the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by law.

(c) The proceeds of any sale of the Mortgaged Property or part thereof or any interest therein, whether pursuant to foreclosure or otherwise hereunder, and all amounts received by Mortgagee by reason of any holding, operation or management of the Mortgaged Property or any part thereof, together with any other moneys at the time held by Mortgagee, shall be applied in the following order:

First: To all costs and expenses of the sale of the Mortgaged Property or any part thereof or any interest therein, including reasonable attorneys' fees and the cost of title searches and guarantee policies, or entering upon, taking possession of, removal from, holding, operating and managing the Mortgaged Property or any part thereof, as the case may be, together with (i) the costs and expenses of any receiver of the Mortgaged Property or any part thereof appointed pursuant hereto, (ii) any taxes, assessments or other charges, prior to the lien of this Mortgage, which Mortgagee may consider necessary or desirable to pay, and (iii) interest at the Default Rate on all advances made by Mortgagee from the date of expenditure until the date paid;

Second: To any Liabilities secured by this Mortgage and at the time due and payable, other than the Liabilities with respect to the Note at the time outstanding;

Third: To all amounts of principal and interest at the time due and payable on the Note at the time outstanding (whether at maturity or on a date fixed for any installment payment or any prepayment or by declaration or acceleration or otherwise), including

10117716

UNOFFICIAL COPY

interest at the Default Rate on any overdue principal and (to the extent permitted under applicable law) on any overdue interest; and, in case such moneys shall be insufficient to pay in full the amount so due and unpaid upon the Note, then, first, to the payment of all amounts of interest at the time due and payable on the Note and, second, to the payment of all amounts of principal at the time due and payable on the Note; and

Fourth: The balance, if any, to the person or entity then entitled thereto pursuant to applicable state law.

(d) On or before exercising any remedy set forth in Section 21(a)(ii), (iii), (iv), (v) or, in connection with a public action, (vii), with respect to an Event of Default described in Section 20(c) or (i) hereof, the Mortgagee agrees to deliver to the Mortgagor an Officer's Certificate to the effect that in Mortgagee's sole judgment, such Event of Default is material to the Mortgagee.

(e) In the event Mortgagee forecloses upon the Mortgaged Property or accepts a deed in lieu of foreclosure, and the Bonds are not redeemed or defeased within 90 days thereof, the Mortgagee agrees to enter into a use agreement reasonably acceptable to bond counsel to the Authority so as not to adversely affect the tax-exempt status of the interest on the Bonds.

22. RIGHTS ARE CUMULATIVE.

Each right, power and remedy of Mortgagee now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power and remedy provided for in this Mortgage, and the exercise of any right, power or remedy shall not preclude the simultaneous or later exercise of any other right, power or remedy. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

23. CONDITIONS PRECEDENT TO ISSUANCE OF GUARANTY

As conditions precedent to the obligation of the Mortgagee to issue the Guaranty,

(a) the Mortgagor shall provide to the Mortgagee on or before the Closing Date, in form and substance satisfactory to the Mortgagee and its special counsel, Ungaretti & Harris:

(1) a written opinion or opinions of counsel to the Mortgagor dated the Closing Date, as to such matters as the Mortgagee may reasonably request;

(2) the written opinion of bond counsel for the Bonds, dated the Closing Date to the effect that the execution and delivery of the Guaranty will not adversely affect the tax-exempt status of the Bonds;

(3) a written opinion of counsel to the Bond Insurer, dated the Closing Date;

UNOFFICIAL COPY

(4) a certificate signed by a duly authorized officer of the Mortgagor, dated the Closing Date and stating that on the Closing Date:

(i) the representations and warranties contained in this Mortgage are correct on and as of the Closing Date as though made on such date;

(ii) no Event of Default or Potential Default has occurred and is continuing under the Master Indenture, or would result from the issuance of the Guaranty or the execution and delivery of this Mortgage; provided, however, that such certification shall indicate that the Mortgagor presently is in default for failure to comply with Section 15 of the Reimbursement, Mortgage and Security Agreement dated as of December 1, 1997 between the Mortgagor and Rush-Presbyterian-St. Luke's Medical Center; and

(iii) resolution(s) of the Mortgagor authorizing the execution, delivery and performance of this Mortgage and the transactions contemplated by this Mortgage are in full force and effect, and attaching copies of such resolutions, certified by the Secretary of the Mortgagor;

(5) a certificate of the President or Vice President - Finance of the Mortgagor certifying the names and true signatures of the officer(s) of the Mortgagor authorized to sign this Mortgage;

(6) ALTA survey of the Mortgaged Property certified to the Mortgagee by an Illinois registered land surveyor;

(7) Mortgagee's title insurance policy in an amount equal to the outstanding principal amount of the Bonds issued by a title insurance company satisfactory to Mortgagee, including a comprehensive endorsement and 3.1 zoning endorsement, which policy shall show that Mortgagor has good and marketable fee simple title to the real estate constituting Mortgaged Property, and that all liens thereon are Permitted Encumbrances;

(8) copies of the Bond Documents;

(9) copies of the articles of incorporation and by-laws of the Mortgagor;

(10) evidence of due authorization, execution and delivery by the parties thereto of this Mortgage and the Bond Documents (including the Note, duly authenticated by the Master Trustee);

(11) true and correct copies of all material and necessary approvals, orders, authorizations, consents, licenses, certificates (including certificates of need) and permits from all applicable governmental authorities for (i) the Authority to execute, deliver and perform the Bond Documents to which it is a party and (ii) the Mortgagor to execute, deliver and perform this Mortgage and the Bond Documents;

(12) this Mortgage duly executed and delivered by the Mortgagor;

101117716

UNOFFICIAL COPY

(13) the Note duly executed and delivered by the Mortgagor and authenticated by the Master Trustee;

(14) UCC-1 financing statements; and

(15) such other documents, certificates and opinions as the Mortgagee or its counsel may reasonably request;

(b) no law, regulation, ruling or other action of the United States, or of the State of Illinois or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the Mortgagor from fulfilling its obligations under this Mortgage;

(c) all legal requirements provided herein incident to the execution, delivery and performance of this Mortgage and the transactions contemplated hereby shall be reasonably satisfactory to the Mortgagee and its counsel;

(d) all necessary approvals for the issuance of the Guaranty shall have been granted by the applicable governing bodies of the Mortgagee; and

(e) the issuance of the Guaranty shall satisfy the provisions of the Resurrection Master Indenture.

Execution and delivery of the Guaranty shall constitute acknowledgment by the Mortgagee that the conditions of this Section 23 have been satisfied or waived.

24. NO WAIVER.

No delay or failure by Mortgagee to insist upon the strict performance of any term hereof or of the Note or to exercise any right, power or remedy provided for herein or therein as a consequence of an Event of Default hereunder or thereunder, and no acceptance of any payment of the principal or interest on the Note during the continuance of any such Event of Default, shall constitute a waiver of any such term, such Event of Default or such right, power or remedy, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any Event of Default hereunder shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent Events of Default. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing such defense in an action at law upon the Note. Mortgagee shall be entitled to enforce payment and performance of any Liabilities or obligations secured hereby and to exercise all rights and powers under this Mortgage or any laws now or hereafter in force, notwithstanding that some or all of the Liabilities and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, trust deed, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or by other powers herein contained, shall prejudice or in any manner affect

UNOFFICIAL COPY

Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee.

25. TAXES ON MORTGAGE OR NOTE.

In the event of the passage of any law which deducts from the value of real property, for purposes of taxation, any lien thereon and which, in turn, imposes a tax, whether directly or indirectly, on this Mortgage or on the Note, and if Mortgagor is prohibited by law from paying the whole of such tax in addition to every other payment required hereunder, or if Mortgagor, although permitted to pay such tax, fails to do so in a timely fashion, then, in such event, at the option of Mortgagee, the entire unpaid principal balance of the Note secured hereby, and all accrued and unpaid interest under the Note, and any other sums secured hereby, shall be due and payable immediately and, thereafter, each of said amounts shall bear interest at the Default Rate.

26. OBLIGATIONS ABSOLUTE.

The obligations of the Mortgagor under this Mortgage shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Mortgage under all circumstances whatsoever, including, without limitation, the following circumstances:

(a) any lack of validity or enforceability of the Guaranty, this Mortgage, the Bond Documents, or any other agreement or instrument relating thereto (collectively, the "Related Documents");

(b) any amendment or waiver of or any consent to departure from all or any of the Related Documents;

(c) the existence of any claim, set-off, defense or other rights which the Mortgagor may have at any time against the Bond Trustee, the Master Trustee, the Bond Insurer, the Mortgagee or any other person or entity, whether in connection with the Related Documents, or any unrelated transaction;

(d) any other circumstances or happening whatsoever, whether or not similar to any of the foregoing.

27. FURTHER ASSURANCES.

Mortgagor, at its expense, and at the request of Mortgagee, will execute, acknowledge, deliver and record or file this Mortgage and such further instruments (including without limitation, further mortgages, security agreements, financing statements, continuation statements and assignments of leases and cash collateral) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and such other instruments given to collateralize the Liabilities secured hereby, and to subject all of the Mortgaged Property to the liens and security interests created herein, including specifically but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Mortgaged Property. Mortgagor will pay all filing or recording fees, and all expenses incident to

10117716

UNOFFICIAL COPY

the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to any portion of the Mortgaged Property, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to any portion of the Mortgaged Property, or any instrument of further assurance. Upon any failure by Mortgagor so to do, Mortgagee may execute and record or file further instruments for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and the attorney-in-fact of Mortgagor so to do. Any expenses of Mortgagee in connection therewith shall be added to the Liabilities secured hereby.

28. RELEASE OF LIEN.

Unless the Mortgagee has previously foreclosed on and taken title to the Mortgaged Property, upon the termination of the Guaranty and payment of all amounts owed to Mortgagee hereunder, then the lien of this Mortgage and the estate and rights hereby created shall cease, terminate and become void in their entirety, and thereupon Mortgagee, upon the written request and at the expense of Mortgagor, shall execute and deliver to Mortgagor such instruments as shall be required to evidence of record the complete satisfaction of this Mortgage and the complete release of the lien hereof. Upon complete satisfaction of this Mortgage, any sums at the time held by Mortgagee for the account of Mortgagor pursuant hereto shall be paid over to Mortgagor or as Mortgagor may direct. Thereupon, Mortgagee, upon the written request and at the expense of Mortgagor, shall execute and deliver to Mortgagor such instruments as shall be required to evidence of record the complete satisfaction of this Mortgage and the complete release of the lien hereof.

29. AMENDMENT.

This Mortgage and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

30. NOTICES.

Any notice, demand or other communication given pursuant to the terms hereof shall be in writing, addressed as follows:

If to Mortgagor: Holy Family Medical Center
100 North River Road
Des Plaines, Illinois 60016
Attention: President

UNOFFICIAL COPY

With a copy to: McDermott Will & Emery
227 West Monroe Street
Chicago, Illinois 60606
Attention: Michael F. Anthony, Esq.

If to Mortgagee: Resurrection Health Care Corporation
7435 West Talcott Avenue
Chicago, Illinois 60631
Attention: President

With copies to: Ungaretti & Harris
3500 Three First National Plaza
Chicago, Illinois 60602
Attention: Thomas M. Fahey, Esq.

and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or if sent by certified or registered mail, postage prepaid, return receipt requested, shall be deemed to have been duly given or made on the date of the return receipt, if accepted, or on the date rejected or returned, if not accepted; provided, however, that either Mortgagor or Mortgagee may change its address for purposes of receipt of notices by giving ten days' written notice of such change to the other party in the manner above prescribed.

31. EXPENSES OF LITIGATION AND AGREEMENT TO PAY COSTS.

If any action or proceeding shall be commenced to which Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by Mortgagee for the expense (including reasonable attorneys' fees) of any litigation to prosecute or to defend the rights and lien created by this Mortgage and all costs and expenses incurred or expended by Mortgagee in connection with any breach by Mortgagor of its obligations hereunder or in connection with any exercise by Mortgagee of its remedies and rights hereunder shall be paid by Mortgagor immediately upon written demand therefor, together with interest thereon at the Default Rate, and any such sums and the interest thereon shall be a lien on the Mortgaged Property, prior to any right, or title to, interest in or claim upon the Mortgaged Property attaching to or accruing subject to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage.

32. PROVISIONS SEVERABLE.

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be determined to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the other terms of this Mortgage shall in no way be affected thereby.

10117716

UNOFFICIAL COPY

33. PARTIAL INVALIDITY OF LIEN.

If the lien or security interest by this Mortgage is invalid or unenforceable as to any part of the Liabilities, or if such lien or security interest is invalid or enforceable as to any part of the Mortgaged Property, any unsecured portion of such Liabilities shall be completely paid prior to the payment of the remaining and secured or partially secured portion of said Liabilities. All payments made on the Liabilities secured hereby, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of such Liabilities which is not secured by the lien or security interest of this Mortgage.

34. GOVERNING LAW.

This instrument is executed in Chicago, Illinois and shall be governed by and construed in accordance with the laws of the State of Illinois.

35. CONSENT OF MORTGAGEE.

No consent or agreement of Mortgagee described herein shall be effective or binding upon Mortgagee unless given in writing by Mortgagee.

36. CAPTIONS.

The captions and headings of various sections and subsections of this Mortgage are for convenience of reference only and are not to be construed as defining, altering or limiting, in any way, the scope or intent of the provisions hereof.

37. MEANINGS.

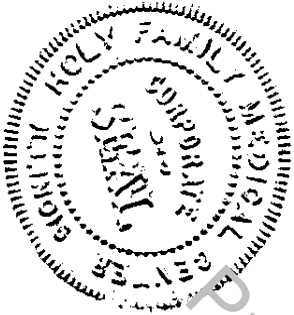
Whenever used herein, the singular number shall include the plural, and the plural the singular. The word "Mortgagor" when used herein shall include the original Mortgagor identified in the preambles hereof, Mortgagor's successors and assigns and all owners from time to time of the Mortgaged Property. The word "Mortgagee" when used herein shall include all successors and assigns of the original Mortgagee identified in the preambles hereof.

38. BINDING ON SUCCESSORS AND ASSIGNS.

This Mortgage and all provisions hereof shall be binding upon Mortgagor and its successors and assigns and all persons claiming under or through Mortgagor or any such successor or assign, and shall inure to the benefit of and be enforceable by Mortgagee and its successors and assigns.

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the day and year first above written.



HOLY FAMILY MEDICAL CENTER, for itself and as
Obligated Group Representative

By: Sister Patricia Ann Koebelke

Its: President and Chief Executive Officer

Attest:

By: Susan M. Kuehberg

Its: Secretary

RESURRECTION HEALTH CARE CORPORATION

By: _____

Its: President

Attest:

By: _____

Its: Senior Vice President - Finance

This instrument was prepared by
and to be returned after recording to:

Julie K. Seymour
UNGARETTI & HARRIS
3500 Three First National Plaza
Chicago, Illinois 60602

10117716

UNOFFICIAL COPY



Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the day and year first above written.

HOLY FAMILY MEDICAL CENTER, for itself and as
Obligated Group Representative

By: _____

Its: President and Chief Executive Officer

Attest:

By: _____

Its: Secretary

RESURRECTION HEALTH CARE CORPORATION

By:  _____

Its: President

Attest:

By:  _____

Its: Senior Vice President - Finance

This instrument was prepared by
and to be returned after recording to:

Julie K. Seymour
UNGARETTI & HARRIS
3500 Three First National Plaza
Chicago, Illinois 60602

10117716

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Susan E. Culotta a Notary Public in for said County, in the State aforesaid, DO HEREBY CERTIFY THAT, Sister Patricia Ann Koshalke, President and Chief Executive Officer of Holy Family Medical Center, as aforesaid, and Susan Weinberg, Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their 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 2 day of January, 2001.

Susan E. Culotta
Notary Public

My commission expires: 1/28/04



10117716

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

10117716

I, Sara McAuliff, a Notary Public, do hereby certify that Joseph Toomey and Thomas Capobianco, personally known to me to be the same persons whose names are, respectively, as President and as Secretary of Resurrection Health Care Corporation, an Illinois not for profit corporation, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they, being thereunto duly authorized, signed, sealed with the seal of said corporation, and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 6th day of February, 2001.



Sara McAuliff
Notary Public in and for Cook County, Illinois

(SEAL)

My commission expires: 4-25-03

UNOFFICIAL COPY

EXHIBIT A
to
REIMBURSEMENT, MORTGAGE, SECURITY AGREEMENT

LEGAL DESCRIPTION
OF THE LAND

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF GOLF ROAD ACCORDING TO THE PLAT OF DEDICATED RECORDED FEBRUARY 27, 1929 AS DOCUMENT NO. 10294766 WITH A LINE 100.00 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SOUTHEAST 1/4; THENCE NORTHERLY ALONG SAID LAST DESCRIBED PARALLEL LINE, 300.00 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTHERLY ALONG SAID LAST DESCRIBED PARALLEL LINE, 602.45 FEET TO AN INTERSECTION WITH THE WESTERLY EXTENSION OF THE SOUTH LINE OF LAND CONVEYED TO NAZARETHVILLE BY WARRANTY DEED RECORDED AS DOCUMENT NO. 22245835; THENCE EASTERLY ALONG SAID SOUTH LINE OF LAND CONVEYED TO NAZARETHVILLE BY WARRANTY DEED RECORDED AS DOCUMENT NO. 22245835 AND ALONG SAID LINE EXTENDED EASTERLY AND WESTERLY, 1298.91 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF DES PLAINES RIVER ROAD AS WIDENED; THENCE SOUTHEASTERLY ALONG SAID WESTERLY LINE OF DES PLAINES RIVER ROAD AS WIDENED, BEING A LINE 55.00 FEET, AS MEASURED AT RIGHT ANGLES, SOUTHWESTERLY OF AND PARALLEL WITH THE CENTER LINE OF SAID ROAD, 915.28 FEET TO AN ANGLE POINT IN SAID LINE; THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF DES PLAINES RIVER ROAD AS WIDENED, 38.50 FEET TO A POINT OF CURVATURE IN THE NORTH LINE OF GOLF ROAD AS SHOWN ON SAID PLAT OF DEDICATION RECORDED FEBRUARY 27, 1929 AS DOCUMENT NO. 10294766; THENCE WESTERLY ALONG THE NORTH LINE OF SAID GOLF ROAD, BEING A STRAIGHT LINE 55.00 FEET, AS MEASURED AT RIGHT ANGLES, NORTH OF AND PARALLEL WITH THE CENTER LINE OF SAID GOLF ROAD, 1226.49 FEET TO THE SOUTHEAST CORNER OF THE LAND CONVEYED TO J.S. ADAMS COMPANY BY WARRANTY DEED RECORDED AS DOCUMENT NO. 21313949; THENCE NORTHERLY ALONG THE EAST LINE OF SAID LAND CONVEYED TO J.S. ADAMS COMPANY BY WARRANTY DEED RECORDED AS DOCUMENT NO. 21313949, 299.71 FEET TO THE NORTHEAST CORNER THEREOF; THENCE WESTERLY ALONG THE NORTH LINE AND SAID NORTH LINE EXTENDED WESTERLY OF SAID LAND CONVEYED TO J.S. ADAMS COMPANY BY WARRANT DEED RECORDED AS DOCUMENT NO. 21313949, BEING A LINE PARALLEL WITH THE NORTH LINE OF GOLF ROAD, AFORESAID, 250.00 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM ALL THAT PART THEREOF DESCRIBED AS FOLLOWS:

10117716

UNOFFICIAL COPY

10117716

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF GOLF ROAD ACCORDING TO THE PLAT OF DEDICATION RECORDED FEBRUARY 27, 1929 AS DOCUMENT NO. 10294766 WITH A LINE 100.00 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHEAST 1/4; THENCE NORTH 02 DEGREES 28 MINUTES 26 SECONDS EAST (BEING AN ASSUMED BEARING FOR THIS LEGAL DESCRIPTION) ALONG SAID LAST DESCRIBED PARALLEL LINE, 902.45 FEET TO AN INTERSECTION WITH THE WESTERLY EXTENSION OF THE SOUTH LINE OF LAND CONVEYED TO NAZARETHVILLE BY WARRANTY DEED RECORDED AS DOCUMENT NO. 22245835; THENCE NORTH 88 DEGREES 42 MINUTES 28 SECONDS EAST ALONG SAID SOUTH LINE OF LAND CONVEYED TO NAZARETHVILLE BY WARRANTY DEED RECORDED AS DOCUMENT NO. 22245835 AND ALONG SAID LINE EXTENDED EASTERLY AND WESTERLY, 118.06 FEET;

THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 47.88 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 00 MINUTES 00 SECONDS, 209.90 FEET; THENCE SOUTHEASTERLY AND SOUTHWESTERLY ALONG A CURVED LINE CONVEX EASTERLY AND HAVING A RADIUS OF 42.00 FEET, AN ARC DISTANCE OF 96.05 FEET (THE CHORD OF SAID ARC BEARS SOUTH 12 DEGREES 06 MINUTES 43 SECONDS WEST, 76.45 FEET); THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 4.73 FEET TO A POINT ON THE NORTH FACE OF A BRICK BUILDING, 32.51 FEET WEST OF THE NORTHEAST CORNER OF SAID BUILDING; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID NORTH FACE OF THE BRICK BUILDING, 18.00 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 4.73 FEET; THENCE NORTHWESTERLY AND NORTHERLY ALONG A CURVED LINE CONVEX SOUTHWESTERLY AND HAVING A RADIUS OF 42.00 FEET, AN ARC DISTANCE OF 70.86 FEET (THE CHORD OF SAID ARC BEARS NORTH 29 DEGREES 17 MINUTES 34 SECONDS WEST, 62.75 FEET); THENCE NORTH 64 DEGREES 07 MINUTES 20 SECONDS WEST, 53.64 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 206.51 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, 113.00 FEET TO THE POINT OF BEGINNING, AND ALSO EXCEPTING THEREFROM ALL THAT PART THEREOF DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF GOLF ROAD ACCORDING TO THE PLAT OF DEDICATION RECORDED FEBRUARY 27, 1929, AS DOCUMENT NO. 10294766, WITH A LINE 100.00 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHEAST 1/4 (THE WEST LINE OF SAID SOUTHEAST 1/4 HAVING AN ASSUMED BEARING OF NORTH 02 DEGREES 28 MINUTES 26 SECONDS EAST FOR THIS LEGAL DESCRIPTION); THENCE NORTH 89 DEGREES 58 MINUTES 16 SECONDS EAST ALONG SAID NORTH LINE OF GOLF ROAD, 1024.49 FEET; THENCE NORTH 00 DEGREES 01 MINUTES 44 SECONDS WEST AT RIGHT ANGLES TO SAID LAST DESCRIBED LINE, 81.87 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 01 MINUTES 44 SECONDS WEST, 118.79 FEET; THENCE NORTH 45 DEGREES 04 MINUTES 42 SECONDS WEST, 38.14 FEET TO A

UNOFFICIAL COPY

POINT ON THE SOUTHEASTERLY FACE OF A BRICK BUILDING; THENCE NORTH 44 DEGREES 55 MINUTES 18 SECONDS EAST ALONG THE NORTHEASTERLY EXTENSION OF THE SOUTHEASTERLY FACE OF SAID BRICK BUILDING, 8.99 FEET TO AN INTERSECTION WITH THE WESTERLY EXTENSION OF THE SOUTH FACE OF A BRICK BUILDING; THENCE NORTH 89 DEGREES 55 MINUTES 18 SECONDS EAST ALONG SAID LAST DESCRIBED LINE, 13.22 FEET; THENCE SOUTH 45 DEGREES 04 MINUTES 42 SECONDS EAST, 37.28 FEET; THENCE SOUTH 00 DEGREES 01 MINUTES 44 SECONDS EAST, 16.82 FEET; THENCE NORTH 89 DEGREES 58 MINUTES 16 SECONDS EAST, 173.10 FEET; THENCE SOUTH 00 DEGREES 01 MINUTES 44 SECONDS EAST, 95.95 FEET; THENCE SOUTH 89 DEGREES 58 MINUTES 16 SECONDS WEST, 117.73 FEET; THENCE SOUTH 00 DEGREES 01 MINUTES 44 SECONDS EAST, 13.00 FEET; THENCE SOUTH 89 DEGREES 58 MINUTES 16 SECONDS WEST, 74.34 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PIN: 09-08-400-016 Vol. No. 086
09-08-400-017 Vol. No. 086

Address: 100 North River Road
Des Plaines, Illinois 60016

10117716

UNOFFICIAL COPY

EXHIBIT C

The Mortgagor executed a Promissory Note (the "Country Life Note") in the original principal amount of \$10,275,000 in favor of Country Life Insurance Company ("Country Life") on October 15, 1999 to permanently finance a medical office building. A copy of the Country Life Note has been provided to the Mortgagee. The Country Life Note matures on November 1, 2009. The loan is a recourse obligation of the Mortgagor, secured by a Mortgage, Security Agreement and Fixture Filing (dated October 15, 1999), a Collateral Assignment of Leases and Rents (dated October 15, 1999) and a Form UCC-1 Financing Statement filed with the Secretary of State of the State of Illinois as document #993092480, relating to a new medical office building, including land, building and equipment and an existing medical office building, including land, building and equipment. Both medical office buildings and all related land and equipment will be Excluded Property under the Master Indenture.

Property of Cook County Clerk's Office

10117716

UNOFFICIAL COPY

EXHIBIT D

Excluded Property

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 8, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF GOLF ROAD ACCORDING TO THE PLAT OF DEDICATION RECORDED FEBRUARY 27, 1929 AS DOCUMENT NO. 10294766 WITH A LINE 100.00 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHEAST 1/4; THENCE NORTH 02 DEGREES 28 MINUTES 26 SECONDS EAST (BEING AN ASSUMED BEARING FOR THIS LEGAL DESCRIPTION) ALONG SAID LAST DESCRIBED PARALLEL LINE, 902.45 FEET TO AN INTERSECTION WITH THE WESTERLY EXTENSION OF THE SOUTH LINE OF LAND CONVEYED TO NAZARETHVILLE BY WARRANTY DEED RECORDED AS DOCUMENT NO. 22245835; THENCE NORTH 88 DEGREES 42 MINUTES 28 SECONDS EAST ALONG SAID SOUTH LINE OF LAND CONVEYED TO NAZARETHVILLE BY WARRANTY DEED RECORDED AS DOCUMENT NO. 22245835 AND ALONG SAID LINE EXTENDED EASTERLY AND WESTERLY, 1118.06 FEET;

THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 47.88 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 00 MINUTES 00 SECONDS, 209.90 FEET; THENCE SOUTHEASTERLY AND SOUTHWESTERLY ALONG A CURVED LINE CONVEX EASTERLY AND HAVING A RADIUS OF 42.00 FEET, AN ARC DISTANCE OF 96.05 FEET (THE CHORD OF SAID ARC BEARS SOUTH 12 DEGREES 06 MINUTES 43 SECONDS WEST, 76.45 FEET); THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 4.73 FEET TO A POINT ON THE NORTH FACE OF A BRICK BUILDING, 32.51 FEET WEST OF THE NORTHEAST CORNER OF SAID BUILDING; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID NORTH FACE OF THE BRICK BUILDING, 18.00 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 4.73 FEET; THENCE NORTHWESTERLY AND NORTHERLY ALONG A CURVED LINE CONVEX SOUTHWESTERLY AND HAVING A RADIUS OF 42.00 FEET, AN ARC DISTANCE OF 70.86 FEET (THE CHORD OF SAID ARC BEARS NORTH 29 DEGREES 17 MINUTES 34 SECONDS WEST, 62.75 FEET); THENCE NORTH 64 DEGREES 07 MINUTES 20 SECONDS WEST, 53.64 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 206.51 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, 113.00 FEET TO THE POINT OF BEGINNING, AND ALSO EXCEPTING THEREFROM ALL THAT PART THEREOF DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF GOLF ROAD ACCORDING TO THE PLAT OF DEDICATION RECORDED FEBRUARY 27, 1929, AS DOCUMENT NO. 10294766, WITH A LINE 100.00 FEET, AS MEASURED AT RIGHT ANGLES, EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHEAST 1/4 (THE WEST LINE OF SAID SOUTHEAST 1/4 HAVING AN ASSUMED BEARING OF NORTH 02 DEGREES 28 MINUTES 26 SECONDS EAST FOR THIS LEGAL

10117716

UNOFFICIAL COPY

10117716

DESCRIPTION); THENCE NORTH 89 DEGREES 58 MINUTES 16 SECONDS EAST ALONG SAID NORTH LINE OF GOLF ROAD, 1024.49 FEET; THENCE NORTH 00 DEGREES 01 MINUTES 44 SECONDS WEST AT RIGHT ANGLES TO SAID LAST DESCRIBED LINE, 81.87 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 01 MINUTES 44 SECONDS WEST, 118.79 FEET; THENCE NORTH 45 DEGREES 04 MINUTES 42 SECONDS WEST, 38.14 FEET TO A POINT ON THE SOUTHEASTERLY FACE OF A BRICK BUILDING; THENCE NORTH 44 DEGREES 55 MINUTES 18 SECONDS EAST ALONG THE NORTHEASTERLY EXTENSION OF THE SOUTHEASTERLY FACE OF SAID BRICK BUILDING, 8.99 FEET TO AN INTERSECTION WITH THE WESTERLY EXTENSION OF THE SOUTH FACE OF A BRICK BUILDING; THENCE NORTH 89 DEGREES 55 MINUTES 18 SECONDS EAST ALONG SAID LAST DESCRIBED LINE, 13.22 FEET; THENCE SOUTH 45 DEGREES 04 MINUTES 42 SECONDS EAST, 37.28 FEET; THENCE SOUTH 00 DEGREES 01 MINUTES 44 SECONDS EAST, 16.82 FEET; THENCE NORTH 89 DEGREES 58 MINUTES 16 SECONDS EAST, 173.10 FEET; THENCE SOUTH 00 DEGREES 01 MINUTES 44 SECONDS EAST, 95.95 FEET; THENCE SOUTH 89 DEGREES 58 MINUTES 16 SECONDS WEST, 117.73 FEET; THENCE SOUTH 00 DEGREES 01 MINUTES 44 SECONDS EAST, 13.00 FEET; THENCE SOUTH 89 DEGREES 58 MINUTES 16 SECONDS WEST, 74.34 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PIN:

Address:

Excluded Property also includes:

42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE CENTER LINE OF MILWAUKEE AVENUE 1466.60 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID CENTER LINE WITH THE CENTER LINE OF DUNDEE ROAD, RUNNING THENCE WESTERLY 179.98 FEET ALONG A LINE PARALLEL WITH THE SOUTH LINE (EXTENDED EAST) OF LOT 243, IN WILLIAM ZELOSKY'S MILWAUKEE AVENUE ADDITION TO WHEELING IN SECTION 2 AFORESAID, THENCE NORTHWESTERLY ALONG A LINE PARALLEL WITH THE CENTER LINE OF MILWAUKEE AVENUE 100 FEET, THENCE EASTERLY 179.98 FEET TO A POINT IN THE CENTER LINE OF MILWAUKEE AVENUE WHICH IS 100 FEET NORTHWESTERLY TO THE PLACE OF BEGINNING; THENCE SOUTHEASTERLY ALONG THE CENTER LINE OF MILWAUKEE AVENUE 100 FEET TO THE PLACE OF BEGINNING.

PIN:

Address:

UNOFFICIAL COPY

EXHIBIT E

Additional Permitted Encumbrances

None

Property of Cook County Clerk's Office

10117716

UNOFFICIAL COPY

SCHEDULE I DEFINITIONS

(a) Unless the context otherwise requires or such terms are defined in this Mortgage, terms defined in the Master Indenture (as in effect on the Closing Date) are used with the same meanings in this Mortgage.

(b) As used in this Mortgage:

"*Bond Documents*" - means the Note, the Bond Indenture, the Master Indenture, the Loan Agreement and the Bonds.

"*Bond Indenture*" - means that certain Bond Trust Indenture dated as of December 1, 1997 between the Bond Trustee and the Authority relating to the Bonds.

"*Bond Trustee*" - shall mean American National Bank and Trust Company of Chicago, as Bond Trustee under the Bond Indenture, and any successor trustee thereunder.

"*Bonds*" - shall have the meaning given such term in the preamble hereto.

"*Closing Date*" - means the date on which all conditions precedent under Article 20 hereof have been met or waived by the Mortgagee and on which the Guaranty is delivered.

"*Code*" - means the Internal Revenue Code of 1986, as amended and the regulations, rulings and proclamations promulgated thereunder.

"*ERISA*" - means the Employee Retirement Income Security Act of 1974, as amended.

"*ERISA Affiliate*" - means any corporation or trade or business which is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Code) as the Mortgagor or is under common control (within the meaning of Section 414(c) of the Code) with the Mortgagor.

"*Event of Default*" - has the meaning given in Section 20 hereof.

"*Excluded Property*" - means the Property described in *Exhibit D* hereto.

"*Fiscal Year*" means the fiscal year of the Mortgagor.

"*Guaranty*" - means the Guaranty Agreement dated as of February 6, 2001 by and among the Mortgagee, the Bond Trustee and the Bond Insurer.

"*Loan Agreement*" - means the Loan Agreement dated as of December 1, 1997, between the Mortgagor and the Authority.

"*Master Indenture*" - means the Master Trust Indenture dated as of December 1, 1997 between the Mortgagor and the Master Trustee, and any and all amendments and supplements thereto.

UNOFFICIAL COPY

"*Master Trustee*" - means U.S. Bank (formerly, First Trust National Association), or any successor trustee under the Master Indenture.

"*Member*" or "*Member of the Obligated Group*" - means the Mortgagor or any other Person who has satisfied the conditions to become a Member of the Obligated Group in accordance with the Master Indenture and which has not ceased such status pursuant to the Master Indenture.

"*Mortgagee*" - shall have the same meaning as in the preamble hereto.

"*Mortgagor*" - shall have the meaning given such term in the preamble hereto.

"*Note*" means the Mortgagor's Amended and Restated Direct Note Obligation, Series 2001A, dated the Closing Date, issued under the Master Indenture to the Mortgagee.

"*Obligated Group*" - means the Mortgagor and any other Members of the Obligated Group under the Master Indenture.

"*Permitted Encumbrances*" - means this Mortgage, the Master Indenture, the Loan Agreement, the Bond Indenture and, as of any particular time:

(a) Liens arising by reason of good faith deposits with the Mortgagor in connection with tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by the Mortgagor to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges, any Lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Mortgagor to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workers' compensation, unemployment insurance, pensions or profit sharing plans or other social security plans or programs, or to share in the privileges or benefits required for corporations participating in such arrangements;

(b) leases which relate to Mortgaged Property of the Mortgagor which is of a type that is customarily the subject of such leases, such as office space for physicians and educational institutions, food service facilities, gift shops and radiology or other hospital-based specialty services, pharmacy and similar departments, any leases entered into in accordance with Section 4(d) of the Mortgage, leases, licenses or similar rights to use Property existing as of December 1, 1997, and any renewals and extensions thereof, and any leases, licenses or similar rights to use Mortgaged Property whereunder the Mortgagor is lessee, licensee or the equivalent thereof upon fair and reasonable terms no less favorable to the lessor or licensor than would obtain in a comparable arm's-length transaction;

UNOFFICIAL COPY

(c) Liens for taxes and special assessments which are not then delinquent, or if then delinquent are being contested in accordance with the provisions of this Mortgage;

(d) utility, access and other easements and rights-of-way, restrictions, encumbrances and exceptions which do not materially interfere with or materially impair the operation of the Mortgaged Property of the Mortgagor affected thereby (or, if such Mortgaged Property is not being then operated, the operation for which it was designed or last modified);

(e) any mechanic's, laborer's, materialman's, supplier's or vendor's Lien or right in respect thereof if payment is not yet due under the contract in question or if such Lien is being contested in accordance with the provisions of this Mortgage;

(f) such minor defects and irregularities of title as normally exist with respect to property similar in character to the Mortgaged Property and which do not materially adversely affect the value of, or materially impair, the Mortgaged Property affected thereby for the purpose for which it was acquired or is held by the Mortgagor;

(g) zoning laws, including laws limiting the use of any part of the Mortgaged Property to hospital purposes, and similar restrictions which are not violated by the Mortgaged Property or the use thereof of the Mortgagor.

(h) statutory rights under Section 291, Title 42 of the United States Code, as a result of what are commonly known as Hill-Burton grants and similar rights under other federal statutes or statutes of the State of Illinois;

(i) all right, title and interest of the State of Illinois, municipalities and the public in and to tunnels, bridges and passageways over, under or upon a public way;

(j) Liens on or in Mortgaged Property given, bequeathed or devised to the owner thereof existing at the time of such gift, bequest or devise, provided that (i) such Liens attached solely to the property which is the subject of such gift, bequest or devise, and (ii) the Indebtedness secured by such Liens is not assumed by the Mortgagor;

(k) Liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Mortgagor shall at any time in good faith be prosecuting an appeal or proceeding for a review and in respect of which a stay or execution pending such appeal or proceeding for review shall be in existence;

(l) Liens on moneys deposited by patients or others with the Mortgagor as security for or as prepayment of the cost of patient care or any rights or residents of life care or similar facilities to endowment or similar funds deposited by or on behalf of such residents;

10117716

UNOFFICIAL COPY

(m) Liens on Mortgaged Property received by the Mortgagor through gifts, grants or bequests, such Liens being due to restrictions on such gifts, grants or bequests of Mortgaged Property or the income thereon;

(n) the Prospect Manor Lease (as such term is defined in the Master Indenture);

(o) Liens on Mortgaged Property due to rights of third party payors for recoupment of excess reimbursement paid to the Mortgagor;

(p) Any Lien on Property (other than the Facilities owned prior to the construction or acquisition of such Property) if, at the time the Indebtedness secured thereby is issued or incurred by the Mortgagor, or in the case of Property acquired subject to an existing Lien, at the time of such acquisition, the aggregate amount remaining unpaid on the Indebtedness secured thereby (whether or not assumed by the Mortgagor) shall not exceed the fair market value or (if such Property has been purchased) the lesser of the acquisition price or the fair market value of the Property subject to such Lien as determined in good faith by the Governing Body of the Mortgagor.

(q) Liens on accounts receivable arising as a result of the sale of such accounts receivable with or without recourse on commercially reasonable terms, provided that the principal amount of Indebtedness secured by any such Lien does not exceed the face amount of such accounts receivable; and

(r) such Liens, covenants, conditions and restrictions, if any, other than those of the type referred to above, as are set forth in *Exhibit E* hereto and which, (i) in the case of Mortgaged Property owned by the Mortgagor on the date of execution of this Mortgage, do not and will not, so far as can reasonably be foreseen, materially adversely affect the value of the Mortgaged Property currently affected thereby or materially impair the same and (ii) in the case of any other Mortgaged Property, do not materially impair or materially interfere with the operation or usefulness thereof for the purpose for which such Mortgaged Property was acquired by or is held by the Mortgagor.

"*Person*" - means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

"*Property*" - means any and all rights, titles and interest in and to any and all property, whether real or personal, tangible (including cash) or intangible, wherever situated and whether now owned or hereafter acquired, other than Excluded Property.

"*Potential Default*" - means an event which but for the lapse of time or the giving of notice, or both, would constitute an Event of Default.

"*Resurrection Master Indenture*" - means the Master Trust Indenture dated as of August 1, 1999, as amended and supplemented, by and between the Mortgagee and American National Bank and Trust Company of Chicago, as master trustee.

UNOFFICIAL COPY

"Resurrection Members" - means those entities identified as Credit Group Members under the Resurrection Master Indenture.

"Unrestricted Receivables" - means all accounts and assignable general intangibles now owned or hereafter acquired by the person involved regardless of where generated, all proceeds therefrom whether cash or noncash, all as defined in Article 9 of the Uniform Commercial Code, as amended, of the state in which such person has its primary place of business; excluding, however, (i) gifts, grants, bequests, donations and contributions to such person heretofore or hereafter made, and the income and gains derived therefrom, which are specifically restricted by the donor or grantor to a particular purpose which is inconsistent with their use for payments required under this Mortgage and (ii) any amount received or to be received as lease payments under all leases for the Mortgagor's existing medical office building and its new medical office building.

10117716

Property of Cook County Clerk's Office