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Cook County Recorder

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This document prepared by  
and after recording return to:

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**MORTGAGE AND SECURITY AGREEMENT**

Date: March 24, 2003

Mortgagor: ALVIO MEDICAL CENTER, INC., a not-for-profit corporation  
organized and existing under the laws of the State Illinois

Address: 966 W. 21<sup>st</sup> Street, Chicago, Illinois 60608-4511

Mortgagee: COLE TAYLOR BANK, an Illinois banking association

Address: 111 West Washington Street, Suite 400, Chicago, Illinois 60602

Mortgage  
Amount: Three Million Eight Hundred Thousand and No/100 Dollars  
(\$3,800,000.00)

Location of  
Premises: 966 W. 21<sup>st</sup> Street, Chicago, Cook County, Illinois 60608

Property Index No.: 17-20-433-006-0000

**BOX 333-CT**

**THIS MORTGAGE AND SECURITY AGREEMENT** (this "Mortgage") is made as of the 24<sup>th</sup> day of March, 2003, by ALIVIO MEDICAL CENTER, INC., an Illinois not-for-profit corporation having its principal office and place of business located at 966 W. 21<sup>ST</sup> Street, Chicago, Illinois 60608-4511 ("Mortgagor"), for the benefit of COLE TAYLOR BANK, an Illinois banking association having an office at 111 West Washington Street, Suite 400, Chicago, Illinois 60602, and its successors and assigns ("Mortgagee").

#### RECITAL

Mortgagor is the owner of the premises described in Exhibit "A" annexed hereto. Mortgagor has borrowed the Mortgage Amount (hereinafter defined), as evidenced by the Note (hereinafter defined), obligating Mortgagor to pay the Mortgage Amount together with all interest accrued thereon.

#### CERTAIN DEFINITIONS

Mortgagor and Mortgagee agree that the following terms shall have the meanings herein specified:

"Chattels" means all supplies, furniture, fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and articles of personal property and replacements thereof owned by Mortgagor, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Premises or the Improvements, together with any proceeds realized from the sale, transfer or conversion of any of the above.

"Default Rate" means (i) at all times prior to a default by HRSA under the Loan Guarantee Agreement, a rate equal to three percent (3%) in excess of the applicable interest rate specified in the Note; and (ii) at all times after a default by HRSA under the Loan Guarantee Agreement, a rate equal to four and one-half percent (4.5%) in excess of the applicable interest rate specified in the Note, but in no event shall the Default Rate be higher than the maximum rate allowed by applicable law.

"Documents" or "Loan Documents" means the Loan Commitment Letter (as defined in the Loan Agreement), the Loan Agreement, the Note, this Mortgage and all other documents or instruments now or hereafter executed or delivered in connection with the loan evidenced by the Note (expressly excluding that certain Loan Guarantee Agreement of even date herewith (the "Loan Guarantee Agreement") between Mortgagee and the United States Department of Health and Human Services, Health Resources and Services Administration, Bureau of Primary Health Care ("HRSA") and that certain Borrower's Agreement with Guarantor of even date herewith between Mortgagor and HRSA).

"Environmental Law" means any federal, state or local statute, code, ordinance, rule, regulation, permit, consent, approval, license, judgment, order, writ, decree, policy, injunction or

other authorization, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6921 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 et seq.), the Clean Air Act, as amended (42 U.S.C. Section 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act (33 U.S.C. Section 2601 et seq.) and the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.) relating to (a) emissions, discharges, releases or threatened releases of Hazardous Materials or other pollutants, contaminants or toxic materials or wastes into ambient air, surface water, ground water, publicly owned treatment works, septic systems or land, (b) the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of hazardous materials or (c) otherwise relating to the pollution or protection of health or the environment.

"Events of Default" means the events and circumstances described as such in Section 2.1 hereof.

"Hazardous Materials" means any substance, material or waste which is regulated by any federal, state or local governmental or quasi-governmental authority, and includes, without being limited to: (a) any substance, material or waste which is now or hereafter defined, used or listed as a "hazardous waste", "extremely hazardous waste", "restricted hazardous waste", "hazardous substance", "hazardous material", "hazardous air pollutant", "toxic substance", "toxic chemical", or other similar or related terms as defined, used or listed in any Environmental Law, and (b) any petroleum products, asbestos, polychlorinated biphenyls, corrosives, infectious substances, lead, urea formaldehyde, flammable explosives or radioactive materials and (c) radon at levels that exceed the U.S. Environmental Protection Agency Action Level Guidelines.

"Illinois Mortgage Foreclosure Law" means the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1504 et seq.), as amended from time to time.

"Improvements" means all improvements, structures or buildings, and replacements and alterations thereof, to be erected or now or hereafter located upon the Premises, including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said improvements, structures or buildings.

"Loan Agreement" means that certain Loan and Security Agreement of even date herewith between Mortgagor and Mortgagee.

"Loan Documents" - see definition of "Documents".

"Mortgage Amount" means Three Million Eight Hundred Thousand and No/100 Dollars (\$3,800,000.00).

"Mortgaged Property" means the property specified as such in the Granting Clause of this Mortgage.

"Mortgagee" means Cole Taylor Bank, its successors and assigns.

"Mortgagor" means Alivio Medical Center, Inc., its successors and assigns.

"Note" means that certain Promissory Note of even date herewith made by Mortgagor, payable to the order of Mortgagee in the Mortgage Amount, together with all renewals, extensions, modifications, amendments, replacements and substitutions thereof or therefor.

"NFA Letter" shall mean that certain letter dated December 17, 1996 from the State of Illinois Environmental Protection Agency to Regent Investment Corporation (LPC# 0316595044 - Cook County; LUST Incident No. 960735).

"Premises" means the real property owned by the Mortgagor and located at 966 W. 21<sup>st</sup> Street, Chicago, Illinois 60608, which is more particularly described in Exhibit "A" attached hereto and made a part hereof, including all of the easements, rights, privileges and appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, claim or demand whatsoever of Mortgagor therein and in and to the strips and gores, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers adjacent thereto, either at law or in equity, in possession or expectancy, now or hereafter acquired.

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage shall be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and/or any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein," the word "Mortgagee" shall mean "Mortgagee or any subsequent holder of the Note," the word "Note" shall mean "the Note or other evidence of indebtedness secured by this Mortgage," the term "lease" shall include all occupancy agreements, licenses and other arrangements by which a person may occupy a portion of the Premises, the term "rent" shall include all impositions, assessments, occupancy charges, maintenance charges, flip taxes and any other fees and charges payable by a tenant of Mortgagor and all other revenues of any kind and nature whatsoever relating to the Premises, the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority or other entity, the words "Mortgaged Property" shall include any portion of the Mortgaged Property or interest therein, and the terms "include", "including" and similar terms shall be construed as if followed by the phrase "without being limited to". Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. All terms of this Mortgage which are not defined above have the meaning set forth in this Mortgage.

#### GRANTING CLAUSE

NOW, THEREFORE, Mortgagor, in order to secure the payment of both the Mortgage Amount and the interest and any other sums payable under the Note, this Mortgage and/or the Documents, and the performance and observance of all the provisions hereof and of the Note and the Documents, including, without limitation, the payment of all sums advanced under the Note and any further sums advanced by Mortgagee pursuant to this Mortgage to the extent the aggregate of such sums expended pursuant hereto exceeds the sum of the Mortgage Amount, hereby gives, grants, bargains, sells, alienates, demises, releases, conveys, assigns, transfers, mortgages and warrants, hypothecates, deposits, pledges, sets over and confirms unto Mortgagee, with full covenants of warranty of title, all of Mortgagor's estate, right, title and interest in, to and under any and all of the

following described property (the "Mortgaged Property"), whether now owned or held or hereafter acquired:

- (i) the Premises;
- (ii) the Improvements;
- (iii) the Chattels;
- (iv) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards and any unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Mortgagor and real estate tax and assessment refunds and credits at any time accruing to the benefit of Mortgagor or the Mortgaged Property, even if relating to taxes and assessments payable for a period or periods prior to the date hereof;
- (v) all leases of the Premises or any part thereof now or hereafter entered into and all right, title and interest of Mortgagor thereunder; and including, without limitation, Mortgagor's right, if any, to cash or securities deposited thereunder, whether or not same was deposited to secure performance by the lessees of their obligations thereunder, including, further, the right upon the happening of an Event of Default, to receive and collect the rents and other charges thereunder (all of which leases are assigned to Mortgagee as further security hereunder);
- (vi) all utility or municipal deposits made by or on behalf of Mortgagor or made in connection with the Premises;
- (vii) all plans, drawings, specifications, site plans, sketches, samples, contracts and agreements, however characterized from time to time, prepared for use in connection with the construction, repair, renovation or maintenance of the Improvements;
- (viii) all contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, rendering of any services, supply of any materials or the conduct of operations in and the management of the Premises, including, without limitation, construction contracts, architect agreements, management agreements, options and other agreements, however characterized, affecting the Premises and/or Improvements;
- (ix) any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished, whether necessary or not, for the operation and use of the Premises and/or the Improvements and/or Chattels, including, without limitation, building permits, environmental certificates, certificates of operation, warranties and guarantees; and
- (x) all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, any of the foregoing hereafter acquired by or released to Mortgagor, or constructed, assembled or placed by Mortgagor

on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assemblage, placement or conversion, as the case may be, and in each such case, without any further mortgage, deed of trust, conveyance, assignment or other act by Mortgagor, the same shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described herein.

TO HAVE AND TO HOLD unto Mortgagee, its successors and assigns forever.

## ARTICLE I

### PARTICULAR COVENANTS, WARRANTIES AND REPRESENTATIONS OF MORTGAGOR

Mortgagor covenants, warrants, represents and agrees as follows:

#### Section 1.1 Title to Mortgaged Property.

(a) Mortgagor warrants that it has a good and marketable title to an indefeasible fee estate in the Premises, subject in all cases to no lien, charge or encumbrance except for the matters listed as exceptions to title in the title policy insuring the lien of this Mortgage that have been approved by Mortgagee in writing (which include an exception for taxes that are a lien, but are not yet due and payable). Mortgagor further warrants that it owns and will own the Chattels free and clear of all liens, claims and encumbrances (except for the lien of this Mortgage); and that this Mortgage is and will remain a valid and enforceable first lien on the Mortgaged Property subject only to the exceptions to title in the title policy insuring the lien of this Mortgage that have been approved by Mortgagee in writing. Mortgagor has full power and lawful authority to mortgage the Mortgaged Property in the manner and form herein done or intended hereafter to be done. Mortgagor will preserve such title, and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

(b) Mortgagor will not, without the prior written consent of Mortgagee, (i) initiate or support any zoning reclassification of the Premises or use or permit the use of the Premises in a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances, (ii) impose or consent to the imposition of any restrictive covenants or encumbrances upon the Premises, (iii) execute, file or consent to any subdivision plat affecting the Premises or consent to the annexation of the Premises to any municipality, (iv) combine the tax lot or lots comprising the Premises with any tax lot or lots or any portion thereof which is not subject to the lien of this Mortgage or (v) permit or suffer the Premises to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement.

Section 1.2 Further Assurances. Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, promptly, upon request by Mortgagee, correct any defect or error which may be discovered in any of the Documents and shall do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, deeds of trust, assignments, notices of assignment, transfers and assurances as Mortgagee shall from time to time reasonably require, for the



better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby conveyed, mortgaged or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey, mortgage or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, and for filing, registering or recording this Mortgage and, on demand, will execute and deliver, and hereby authorizes Mortgagee to execute in the name of Mortgagor to the extent it may lawfully do so, in the event of the failure or refusal of Mortgagor so to do, one or more financing statements, chattel mortgages or comparable security instruments, and renewals thereof, to evidence more effectively the lien hereof upon the Chattels.

**Section 1.3    Recording Fees/Transfer Taxes.**

(a) Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter from time to time, upon request by Mortgagee will cause this Mortgage and any security instrument creating a lien or evidencing the lien hereof upon the Chattels and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of Mortgagee in, the Mortgaged Property.

(b) Mortgagor will pay all filing, registration and recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels, 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, delivery and/or recording of the Note, this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels or any instrument of further assurance.

(c) If a mortgage recording or transfer tax is imposed on this Mortgage or any amendment to this Mortgage at any time, Mortgagor shall pay such tax. If applicable law prohibits Mortgagor from making any such payment, Mortgagee may, at its election, declare all sums outstanding under the Note, this Mortgage and/or any other Document immediately due and payable. Mortgagee and/or its assigns shall have no obligation to either participate in any dispute of said tax or to make any payment with respect thereto, and Mortgagor agrees to indemnify Mortgagee and its assigns and hold them harmless from any liability with respect thereto and to reimburse or pay upon demand for the same by Mortgagee and/or its assigns their reasonable costs and expenses (including, but without limitation, reasonable attorneys' fees and disbursements) incurred with respect thereto or in connection therewith.

**Section 1.4    Payment of Indebtedness.** Mortgagor will punctually pay the principal and interest and all other sums to become due in respect of the Note at the time and place and in the manner specified in the Note, according to the true intent and meaning thereof and without offset or counterclaim, all in any coin or currency of the United States of America which at the time of such payment shall be legal tender for the payment of public and private debts.

**Section 1.5    Good Standing of Mortgagor.** Mortgagor is a duly created, validly existing Illinois not-for-profit corporation in good standing under the laws of such jurisdiction, with full power and authority to execute and deliver the Documents and consummate the transactions

contemplated hereby. Mortgagor will do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges, as a corporation under the laws of such jurisdiction and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court and applicable to Mortgagor or to the Mortgaged Property or any part thereof. Mortgagor will not without the prior written consent of Mortgagee, so long as any sums are owed pursuant to the Note or this Mortgage (i) consolidate or merge Mortgagor into or with any corporation, partnership or other entity, effect any voluntary liquidation or reorganization, or effect any change in its capital structure, or (ii) amend its articles of incorporation or its bylaws. Any request by Mortgagor for Mortgagee's approval of any amendments to the articles of incorporation or by-laws of Mortgagor shall not be unreasonably withheld or delayed by Mortgagee.

**Section 1.6 Lien on Improvements.** All rights, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by or released to Mortgagor or constructed, assembled or placed by Mortgagor on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clause hereof, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

**Section 1.7 Impositions and Tax Deposits.**

(a) Mortgagor, from time to time when the same shall become due and payable, but without the benefit of any grace period therefor, whether or not a penalty or interest charge would be imposed in such grace period, will pay and discharge all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes), all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against it or the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof (collectively, "Impositions"). Mortgagor will, upon the request of Mortgagee, deliver to Mortgagee receipts evidencing the payment of all such Impositions imposed upon or assessed against it or the Mortgaged Property or the revenues, rents, issues, income or profits thereof.

(b) Following the occurrence of an Event of Default, Mortgagee may require that Mortgagor shall deposit with Mortgagee or any servicer or financial institution designated for such purposes by Mortgagee (whichever of the foregoing is applicable being the "Depository"), on the first (1<sup>st</sup>) day of each month, one-twelfth (1/12) of the annual real estate taxes ("Taxes") assessed against the Mortgaged Property (and, if Mortgagee shall so elect, any or all other Impositions), and Mortgagor shall accordingly make such deposits. In addition, if required by Mortgagee, Mortgagor shall also deposit with the Depository a sum of money which, together with the aforesaid monthly installments, will be sufficient to make payments of Taxes (and, if Mortgagee



has elected to collect deposits for other Impositions, such other Impositions) at least forty-five (45) days before such payments are due. If the amount of any such payment is not ascertainable at the time any such deposit is required to be made, the deposit shall be made on the basis of Mortgagee's reasonable estimate thereof, and when such amount is fixed for the then-current year, Mortgagor shall promptly deposit any deficiency with the Depository.

All funds so deposited, until so applied, shall constitute additional security for the Note and other indebtedness secured hereby, shall be held by the Depository without interest (except to the extent required under applicable laws), and may be commingled with other funds of the Depository. So long as no Event of Default shall exist and be continuing hereunder, and provided that Mortgagor shall have supplied, in the manner set forth in the next sentence of this subsection, the instructions, information and documents necessary for the Depository to make an effective application and payment of such funds, all funds so deposited shall be applied to the payment of Impositions in the order determined by Mortgagee and in accordance with instructions to be furnished to Mortgagee by Mortgagor. Mortgagor shall, at least twenty (20) days before the date on which the Impositions first become payable, furnish the Depository with bills and instructions for the payment of the Impositions and/or such other documents as are necessary for the payment of the same. If Mortgagor has not complied with any of the foregoing or, in any event, during the continuance of an Event of Default hereunder, Mortgagee may apply funds so deposited in the order determined by Mortgagee.

Upon an assignment of this Mortgage by Mortgagee, Mortgagee shall have the right to pay over, or cause the Depository (if not Mortgagee) to pay over the unapplied balance of any amounts deposited pursuant to this Section 1.7, if any, to the assignee (or to a successor Depository designated by such assignee) and Mortgagee shall thereupon be completely released from all liability with respect thereto. This provision shall apply to every transfer of such deposits to a new assignee (or a successor Depository). When the loan evidenced by the Note has been paid in full, and all other obligations of Mortgagor under the Documents have been performed and observed in full, Mortgagee shall, and at any prior time, Mortgagee, at its election, may, pay over or cause the Depository (if not Mortgagee) to pay over the unapplied balance of the deposits, if any, to the record owner of the Mortgaged Property or its designee and no other person shall have any right or claim thereto.

(c) Mortgagor will pay all taxes except income, franchise or other similar taxes, inheritance, estate and gift taxes, imposed on Mortgagee by reason of its ownership of the Note or this Mortgage.

(d) Nothing in this Section 1.7 shall require the payment or discharge of any obligation imposed upon Mortgagor by this Section so long as Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Premises or any part thereof to satisfy the same; provided that during such contest Mortgagor shall, at the option of Mortgagee, provide security satisfactory to Mortgagee, assuring the discharge of Mortgagor's obligation hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided, further, that if at any time payment of any obligation imposed upon Mortgagor by subsection (a) of this Section shall become necessary to prevent the delivery of a tax deed or other similar instrument conveying the Mortgaged Property

or any portion thereof because of non-payment, then Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed or other similar instrument.

Section 1.8 Mechanics' and Other Liens. Mortgagor will pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom, and in general will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of Mortgagor, without expense to Mortgagee. In the event any lien, charge or order for the payment of money or other encumbrance is filed against the Mortgaged Property, Mortgagor shall cause the same to be discharged of record or bonded within thirty (30) days after the filing thereof. All costs and expenses incurred in posting the bond or other security and in defending any lien foreclosure action shall be borne exclusively by Mortgagor. Mortgagor further agrees to reimburse Mortgagee for all reasonable costs and expenses, including reasonable attorneys' fees and disbursements incurred by Mortgagee in connection with any such lien foreclosure action. Notwithstanding the foregoing, Mortgagor shall not be in default for failure to pay or discharge a mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as: (a) Mortgagor shall have notified Mortgagee of the same within five (5) days of obtaining knowledge thereof; (b) Mortgagor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof to satisfy the same; (c) Mortgagor shall have furnished to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety satisfactory to Mortgagee, in the amount of the mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matter under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; and (e) the failure to pay the mechanic's or materialman's lien claim does not constitute a default under any other mortgage, deed of trust or security interest covering or affecting any part of the Mortgaged Property. If Mortgagor has commenced a contest as aforesaid, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to be discharged or bonded against) any such claim notwithstanding such contest, if in the opinion of Mortgagee, the Mortgaged Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, canceled or lost. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Mortgagee, the entitlement of such claimant is established.

Section 1.9 Insurance and Insurance Deposits.

(a) Without limiting any provision in the Loan Agreement with respect to the placement and maintenance of insurance, Mortgagor will, at its expense, provide or cause to be provided in force the following policies of insurance:

(i) insurance with respect to the Improvements and the Chattels against any peril included within the classification "All Risks of Physical Loss", including, without limitation, insurance against loss or damage by fire, lightning, windstorm, civil commotion,

smoke, hail, aircraft, vandalism, explosion, riot, strike, water damage, sprinkler leakage, collapse and malicious mischief, in amounts at all times sufficient to prevent Mortgagor from becoming coinsurer within the terms of the applicable policies, but in any event such insurance shall be maintained in the full insurable value of the Improvements and the Chattels (the term "full insurable value" to mean 100% of the actual replacement cost of the Improvements and the Chattels), subject to a deductible(s) that is reasonably satisfactory to Mortgagee;

(ii) comprehensive general liability insurance, including bodily injury and property damage liability against any and all claims, including, without limitation, all legal liability to the extent insurable imposed upon Mortgagee and all court costs and reasonable attorneys' fees, arising out of or connected with the possession, use, leasing, operation or condition of the Premises, in such amounts and of such types as Mortgagee may require from time to time;

(iii) statutory workers' compensation insurance with respect to any work on or about the Premises;

(iv) loss of "business income" insurance covering one year of loss;

(v) insurance against loss or damage from (A) leakage of sprinkler systems, and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed on the Premises and including broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery and equipment located in, on or about the Premises; and

(vi) such other insurance and increased policy limits with respect to the Mortgaged Property as may be reasonably required from time to time by Mortgagee.

(b) Each policy of insurance maintained by Mortgagor pursuant to the terms hereof shall (i) name Mortgagee (together with its successors and assigns as their interests may appear) as an additional insured, as its interest may appear with respect to liability insurance coverage; (ii) contain a standard non-contributory mortgagee clause endorsement in favor of Mortgagee with respect to hazard insurance coverage; (iii) name Mortgagee as additional insured and provide that all insurance proceeds for losses be adjusted and be payable in accordance with subsection 19(f) hereof; (iv) include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and named insureds other than Mortgagor (provided that Mortgagee shall have the right to pay premiums and continue any insurance upon the insolvency of Mortgagor or the foreclosure or other transfer of the Mortgaged Property) and all rights of subrogation against any named insured; (v) except in the case of public liability insurance and workers' compensation insurance, provide that any losses shall be payable notwithstanding (A) any act, failure to act, negligence of, or violation or breach of warranties, declarations or conditions contained in such policy by Mortgagor or Mortgagee or any other named insured or loss payee, (B) any foreclosure or other proceeding or notice of sale relating to the insured properties or (C) any change in the title to or ownership or possession of the insured properties; (vi) provide that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each named insured and loss payee and that no cancellation, termination, expiration or

reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after each named insured and loss payee shall have received written notice thereof; and (vii) not be subject to a deductible in excess of amounts as shall be reasonably satisfactory to Mortgagee.

(c) Mortgagor shall pay or cause to be paid as and when the same become due and payable, the premiums for all insurance policies that Mortgagor is required to maintain hereunder. All such policies shall be nonassessable and shall contain such expiration dates as Mortgagee may reasonably require. Mortgagor will deliver to Mortgagee concurrently herewith insurance certificates setting forth in reasonable detail the terms of all insurance policies that Mortgagor is required to maintain hereunder, together with true and complete copies of such policies. Mortgagor will deliver to Mortgagee, concurrently with each change in or renewal of any such insurance policy, a certificate with respect to such changed insurance policy certified by the insurance broker that procured or placed such policies, in the same form and containing the same information as the initial certificates required to be delivered by Mortgagor pursuant to this subparagraph and a certificate of Mortgagor certifying that all of the insurance policies maintained by Mortgagor pursuant hereto comply in all respects with the requirements of this Mortgage, that all premiums then due thereon have been paid to the applicable insurers and that the same are in full force and effect.

(d) Not later than thirty (30) days prior to the expiration, termination or cancellation of any insurance policy which Mortgagor is required to maintain hereunder, Mortgagor shall obtain a replacement policy or policies (or a binding commitment for such replacement policy or policies), which shall be effective no later than the date of the expiration, termination or cancellation of the previous policy, and shall deliver to Mortgagee a certificate and a true and complete copy of such policy or policies which comply with the requirements of this Section 1.9 or a copy of a binding commitment for such policy or policies. Mortgagor shall also provide to Mortgagee originals of such policies or copies thereof certified by the insurance companies issuing them as soon as reasonably possible after Mortgagor's request therefor.

(e) All insurers shall be authorized to issue insurance in the jurisdiction in which the Premises is located and all insurers and reinsurers shall have the A.M. Best rating of "A-V" or better.

(f) In the event of loss, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. Mortgagor hereby authorizes and empowers Mortgagee, as attorney-in-fact for Mortgagor, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this subsection 1.9(f) shall require Mortgagee to incur any expense or take any action hereunder. Notwithstanding anything to the contrary contained herein or in any provision of applicable law, the proceeds of insurance policies coming into the possession of Mortgagee shall not be deemed trust funds and Mortgagee shall be entitled to dispose of such funds as herein provided.

(g) Any moneys received by Mortgagor as payment for any loss under any insurance required to be carried by Mortgagor pursuant to the terms hereof shall be paid over to Mortgagee to be applied at the option of Mortgagee either to the prepayment of the Note, without



premium, and/or to the reimbursement of Mortgagor for expenses incurred by it in the restoration of the Improvements. Notwithstanding the foregoing, in the event of damage or destruction to the Premises where the loss is in an aggregate amount of less than twenty-five percent (25%) of the then outstanding principal balance of the Note, Mortgagee shall make the proceeds of insurance received as a result of such damage or destruction available for the repair and restoration of the Improvements, subject to the following conditions: (i) that there does not then exist any Event of Default under this Mortgage or any of the other Loan Documents; (ii) that all then existing leases and subleases of the Improvements shall continue in full force and effect without reduction or abatement of rental (except during any period of untenability and except to the extent covered by rent loss insurance); (iii) that Mortgagee shall first be given satisfactory proof that such improvements have been fully repaired and restored, or that by the expenditure of such money will be fully repaired and restored, free and clear of all liens, except the lien of this Mortgage and for the matters listed as exceptions to title in the title policy insuring the lien of this Mortgage that have been approved by Mortgagee in writing (which include an exception for taxes that are a lien, but are not yet due and payable); (iv) that in the event such proceeds shall be insufficient to repair and restore the Improvements, Mortgagor shall deposit promptly with Mortgagee the amount of such deficiency; (v) that in the event Mortgagor shall fail within a reasonable time to repair and restore the Improvements, then Mortgagee, at its option, may repair and restore the Improvements for or on behalf of Mortgagor and for such purpose may do all necessary acts, including using said funds deposited by Mortgagor as aforesaid; (vi) that waiver of the right of subrogation shall be obtained from any insurer under such policies of insurance who, at that time, claims that no liability exists as to Mortgagor or the then owner or the assured under such policies; (vii) that such funds shall be disbursed upon request of Mortgagor accompanied by such lien waivers, architect's certificates and other documentation as Mortgagee shall request in the exercise of reasonable discretion; and (viii) that the excess of said insurance proceeds above the amount necessary to complete such repair and restoration shall be applied as a credit upon any portion, as selected by Mortgagee, of the indebtedness secured hereby. Under no circumstances shall the provisions of this Section 1.9(g) be deemed to obligate Mortgagee to take any action to repair and restore the Improvements.

(h) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 1.9 unless Mortgagee has approved the insurance company and the form and content of the insurance policy, including, without limitation, the naming thereon of Mortgagee as a named insured with loss payable to Mortgagee under a standard mortgagee endorsement of the character above described. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies or certificates of such insurance.

(i) Following the occurrence of an Event of Default, Mortgagee may require that Mortgagor shall deposit with the Depository, on the first (1<sup>st</sup>) day of each month, one-twelfth (1/12) of the annual premiums for insurance required under subsection 1.9(a) hereof, and (ii) Mortgagor shall also deposit with the Depository a sum of money which, together with the aforesaid monthly installments, will be sufficient to pay the insurance premiums for such insurance at least thirty (30) days before such payments are first due. If the amount of any such insurance premiums are not ascertainable at the time any such deposit is required to be made, the deposit shall be made on the basis of Mortgagee's estimate thereof, and when such insurance premiums are fixed for the then-current year, Mortgagor shall promptly deposit any deficiency with the Depository.



All funds so deposited, until so applied, shall constitute additional security for the Note, shall be held by the Depository without interest (except to the extent required under applicable laws), and may be commingled with other funds of the Depository. So long as no Event of Default shall exist and be continuing hereunder, and provided that Mortgagor shall have supplied, in the manner set forth in the next sentence of this subsection, the instructions, information and documents necessary for the Depository to make an effective application and payment of such funds, all funds so deposited shall be applied to the payment of insurance premiums in the order determined by Mortgagee and in accordance with instructions to be furnished to Mortgagee by Mortgagor. Mortgagor shall, at least thirty (30) days before the date on which any such insurance premiums first become payable, furnish the Depository with bills and instructions for the payment of such insurance premiums and/or such other documents as are necessary for the payment of the same. If Mortgagor has not complied with any of the foregoing or, in any event, during the continuance of an Event of Default hereunder, Mortgagee may apply funds so deposited in the order determined by Mortgagee.

Upon an assignment of this Mortgage by Mortgagee, Mortgagee shall have the right to pay over, or cause the Depository (if not Mortgagee) to pay over the unapplied balance of any amounts deposited pursuant to this Section 1.9, if any, to the assignee (or to a successor Depository designated by such assignee) and Mortgagee shall thereupon be completely released from all liability with respect thereto. This provision shall apply to every transfer of such deposits to a new assignee (or a successor Depository). When the loan evidenced by the Note has been paid in full, and all other obligations of Mortgagor under the Documents have been performed and observed in full, Mortgagee shall, and at any prior time, Mortgagee, at its election, may, pay over or cause the Depository (if not Mortgagee) to pay over the unapplied balance of the deposits, if any, to the record owner of the Mortgaged Property or its designee and no other person shall have any right or claim thereto.

**Section 1.10 Additional Advances and/or Disbursements.** If Mortgagor or any party under any of the Documents shall fail to perform any of the covenants contained in this Mortgage, or any covenant contained in the Note or any of the other Documents, Mortgagee may make advances and/or disbursements to perform the same, and all sums so advanced and/or disbursed shall be a lien upon the Mortgaged Property and shall be secured hereby. Mortgagor will repay on demand all sums so advanced and/or disbursed with interest at the Default Rate. The provisions of this Section 1.10 shall not prevent any default in the observance of any covenant contained in this Mortgage, or contained in the Note or any of the other Documents from constituting a default or an Event of Default.

**Section 1.11 Financial Statements; Reporting Requirements.** Mortgagor shall keep and maintain books and records of accounts and satisfy all reporting requirements set forth in the Loan Agreement.

**Section 1.12 Maintenance of Property; Compliance with Law.**

(a) Mortgagor will not threaten, commit, permit or suffer any waste to occur on or to the Mortgaged Property, or any part thereof, or alter the Mortgaged Property or any part thereof in any manner or make any change in its use which will in any way increase any risk of fire or other hazards arising out of construction or operation of the Mortgaged Property. Mortgagor will, at all times, maintain the Mortgaged Property in good operating order and condition

and will promptly make, from time to time, all repairs, renewals, replacements, additions and improvements in connection therewith which are needful or desirable to such end. The Improvements shall not be removed, demolished or substantially altered, nor shall any Chattels be removed without the prior written consent of Mortgagee, except where appropriate replacements free of superior title, liens and claims are immediately made of value at least equal to the value of the Chattels removed.

(b) Mortgagor will keep and maintain or cause to be kept and maintained the Mortgaged Property and the sidewalks and curbs abutting the same in good order and condition and in a rentable and tenantable state of repair and will make or cause to be made, as and when the same shall become necessary, all structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen repairs, renewals and replacements necessary to that end. In the event that the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or any other casualty, or in the event of a taking of a portion of the Mortgaged Property as a result of any exercise of the power of eminent domain, Mortgagor shall promptly restore, replace, rebuild or alter the same as nearly as possible to the condition they were in immediately prior to such fire, other casualty or taking, and shall take such other additional actions and measures as shall be necessary to avoid any default or forfeiture under any lease or other applicable agreement. Although damage to or destruction of the Mortgaged Property, or any portion thereof, shall not of itself constitute a default hereunder, the failure of Mortgagor to restore, replace, rebuild or alter the same, as hereinabove provided, shall constitute a default hereunder regardless of the availability of insurance proceeds or condemnation awards for such purpose.

(c) Mortgagor represents that the Mortgaged Property is presently in compliance with all laws, ordinances, rules, regulations and other requirements of all governmental authorities whatsoever having jurisdiction of or with respect to the Mortgaged Property or any portion thereof or the use or occupation thereof. Mortgagor will promptly comply, or cause compliance with, all existing and future laws, ordinances, rules, regulations and other requirements of all governmental authorities whatsoever having jurisdiction of or with respect to the Mortgaged Property or any portion thereof or the use or occupation thereof.

(d) Mortgagor will not, without the prior written consent of Mortgagee, initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Premises or any part thereof.

(e) All covenants hereof shall be construed as affording to Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of any other applicable law. If there is a conflict between any provision of this Mortgage and the provisions of any such applicable law, Mortgagor agrees that, to the extent permitted by applicable law, the applicable provision of this Mortgage shall control.

Section 1.13 Condemnation. No proceeding for the condemnation of all or any portion of the Mortgaged Property has been commenced or threatened. Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify Mortgagee of the pendency of such proceedings. Mortgagee may participate in any such proceedings and Mortgagor from time to time will deliver to

Mortgagee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable is hereby assigned to and shall be paid to Mortgagee up to the Mortgage Amount then outstanding and unpaid. Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. In any such condemnation proceedings, Mortgagee may be represented by counsel selected by Mortgagee, but Mortgagor may also appear by its counsel to contest the amount of the condemnation award. The proceeds of any award or compensation so received shall, at the option of Mortgagee, either be applied, without premium, to the prepayment of the Note or be paid over to Mortgagor for restoration of the Improvements. Mortgagee shall not be limited to the interest paid on the proceeds of any award or compensation, but shall be entitled to the payment of interest by Mortgagor at the rates provided for herein or in the Note.

Section 1.1+ Leases.

(a) Mortgagor will not, without the prior written consent and approval of Mortgagee in each instance: (i) execute an assignment of the rents from the Mortgaged Property or any part thereof, (ii) enter into any leases, lettings or license arrangement affecting the Mortgaged Property or any part thereof, or (iii) in any other manner impair the value of the Mortgaged Property or the security of the Mortgage. Mortgagor will not without the prior written consent and approval of Mortgagee, in each instance, (x) terminate or consent to the cancellation or surrender of any lease of the Mortgaged Property or of any part thereof, now existing or hereafter to be made, (y) modify or vary any such lease, or (z) accept prepayments in excess of one (1) month of any installments of rents to become due under such leases, except prepayments in the nature of security for the performance of the lessees thereunder.

(b) Mortgagor will at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases of the Premises or any part thereof now or hereafter existing, on the part of the lessor thereunder to be kept and performed, and shall do all things necessary to compel performance by the lessee under each lease of all obligations, covenants and agreements by such lessee to be performed thereunder. If any of such leases provide for the giving by the lessee of certificates with respect to the status of such leases, Mortgagor shall exercise its right to request such certificates within five (5) days of any demand therefor by Mortgagee. Mortgagor shall promptly notify Mortgagee of (i) the commencement of any action or proceeding by any lessee, the purpose of which shall be the cancellation of any lease or diminution or offset against the rent payable under any such lease, or (ii) the interposition by any lessee of any defense in any action or proceeding brought by Mortgagor against such lessee, or (iii) a written notice received by Mortgagor from any lessee claiming constructive eviction, and will cause a copy of any process, pleading or notice received by Mortgagor in reference to any such action, defense or claim to be promptly delivered to Mortgagee.

(c) Mortgagor shall furnish to Mortgagee, within thirty (30) days after a request by Mortgagee to do so, a written statement containing a schedule of all leases of all or any part of the Mortgaged Property, the names of the respective lessees, the terms of their respective leases, the space occupied and the rentals payable thereunder, and, if also requested, true copies of all such leases.

Section 1.15 Notices to Mortgagee. Mortgagor shall give written notice to Mortgagee promptly (but in no event later than five (5) business days after Mortgagor's discovery thereof) upon the occurrence of:

(a) any default by Mortgagor under this Mortgage or any other Document;

(b) any pending or threatened litigation affecting Mortgagor or any portion of Mortgaged Property;

(c) any claims, disputes, judgments or violations of law, or any breach by Mortgagor or any material agreement to which Mortgagor is a party; and/or

(d) any other facts and circumstances which might materially impact the Mortgaged Property, Mortgagor or the loan secured hereby.

Section 1.16 Attornment. To the extent not so provided by applicable law, each lease of the Premises or any part thereof shall provide that, in the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee thereunder will, upon request of any person succeeding to the interest of Mortgagor as a result of such enforcement, automatically become the lessee of said successor in interest, without change in the terms or other provisions of such lease, provided, however, that said successor in interest shall not be bound by (i) any payment of rent or additional rent for more than one (1) month in advance, except prepayments in the nature of security for the performance by said lessee of its obligations under said lease, (ii) any amendment or modification of the lease made without the consent of Mortgagee or such successor in interest, or (iii) any work required to be done by Mortgagor pursuant to the terms of said lease. Each such lease shall also expressly provide that, upon request by said successor in interest, such lessee shall execute and deliver an instrument or instruments confirming such attornment.

Section 1.17 Expenses of Mortgagee. Mortgagor agrees that if any action or proceeding be commenced, excepting an action to foreclose this Mortgage or to collect the indebtedness hereby secured, to which action or proceeding Mortgagee is a party by reason of the execution of this Mortgage or the Note which it secures, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by Mortgagee for the expense of any litigation to prosecute or defend the transaction and the rights and lien created hereby (including, without limitation, reasonable attorneys' fees) shall be paid by Mortgagor together with interest thereon from the date of payment by Mortgagee at the Default Rate. All such sums paid and the interest thereon shall be a lien upon the Mortgaged Property, and shall be secured hereby.

Section 1.18 Change in Law Affecting Mortgages. Mortgagor agrees that in the event of the passage after the date of this Mortgage of any law deducting any lien from the value of land for the purpose of taxation, or changing in any way the laws now in force for the taxation of mortgages or debts secured by a mortgage, or the manner of the collection of any such taxes, so as to impose upon Mortgagee any tax that previously would have been payable by Mortgagor, the whole of the principal sum secured by this Mortgage, together with interest due thereon, shall at the option of Mortgagee, without notice to any party, become immediately due and payable.

Section 1.19 Utilities. The Mortgaged Property will be provided with adequate water, sewer and other utility facilities at all times, in compliance with all applicable laws and regulations.

Section 1.20 Restrictions on Transfer or Encumbrance. Mortgagor shall not, directly or indirectly, by transfer, mortgage, hypothecation, encumbrance or conveyance, do or suffer the assignment, transfer, sale, conveyance or encumbrance junior or senior hereto of the Mortgaged Property or any part thereof or any interest therein or in Mortgagor without in each instance the prior written consent of Mortgagee.

Section 1.21 Hazardous Materials. Mortgagor represents, warrants and covenants that except as disclosed by the NFA Letter and the documents therein referenced, Mortgagor has not used and that to Mortgagor's knowledge, no other person or entity has used Hazardous Materials on, from or affecting the Mortgaged Property in any manner which violates any Environmental Law and, to Mortgagor's knowledge, no prior owner of the Mortgaged Property or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from or affecting the Mortgaged Property in any manner which violates any Environmental Law. Mortgagor represents, warrants and covenants that since the issuance of the NFA, no actions, investigations or lawsuits have been commenced or threatened by any person claiming non-compliance by Mortgagor or the Mortgaged Property with any Environmental Law. Mortgagor represents, warrants and covenants that, except as set forth in the documents described in Exhibit "B" attached hereto (the "Environmental Reports"), true and complete copies of which have been delivered to Mortgagee, the Mortgaged Property is in compliance with all Environmental Laws and that no asbestos or other Hazardous Materials (except Permitted Hazardous Materials, as hereinafter defined) have been, or at present are, incorporated in, stored on, treated on or disposed of on or from the Mortgaged Property. Mortgagor shall keep or cause the Mortgaged Property to be kept free of Hazardous Materials (except Permitted Hazardous Materials), and without limiting the foregoing, shall not cause or permit the Mortgaged Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials (except Permitted Hazardous Materials), nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant or subtenant, a release of Hazardous Materials onto or from the Mortgaged Property. Mortgagor shall comply with and ensure compliance by all tenants and subtenants with all applicable Environmental Laws whenever and by whomever triggered, and shall obtain and comply with any and all approvals, registrations or permits required thereunder. Mortgagor shall (a) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Mortgaged Property (i) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (ii) to the satisfaction of Mortgagee, and (iii) in accordance with the orders and directions of all federal, state and local governmental authorities, (b) develop, formalize and implement Operations and Maintenance Programs (the "O/M Programs") for the treatment of asbestos-containing materials, lead-based paint and other adverse environmental conditions disclosed by the Environmental Reports, which must be acceptable to Mortgagee in all respects, and (c) defend, indemnify and hold harmless Mortgagee and its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Materials on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or other persons or things at



the Premises; (B) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials; and/or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of Mortgagee, which are based upon or in any way related to such Hazardous Materials, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. In addition to the requirements set forth in this Section 1.21, in the event any Environmental Report recommends asbestos treatment, such treatment shall be certified to Mortgagee by an asbestos hygienist or engineer licensed by the state and local jurisdiction (where required) in which the Premises is located. Mortgagor shall promptly undertake to have the Hazardous Materials treated or removed and/or deposit with Mortgagee the estimated cost (as reasonably determined by Mortgagee from time to time) to effect the removal of the Hazardous Materials or remedy any condition pertaining to the existence, release or threatened release of Hazardous Materials on or affecting the Mortgaged Property. In the event of Mortgagor's failure to comply with the provisions of this Section 1.21, Mortgagee may apply any or all of such sums so deposited with Mortgagee to affect the removal or other remedy as required pursuant to this Section 1.21. So long as there is no default or Event of Default hereunder, any sums not so applied shall be returned to Mortgagor by Mortgagee promptly upon completion of the removal or other remedy required hereunder to the satisfaction of Mortgagee. In the event this Mortgage is foreclosed, or Mortgagor tenders a deed in lieu of foreclosure, Mortgagor shall deliver the Mortgaged Property to Mortgagee free of any and all Hazardous Materials (except to the extent the presence of Hazardous Materials is expressly permitted pursuant to the NFA Letter) so that the condition of the Mortgaged Property shall conform with all applicable federal, state and local laws, ordinances, rules and regulations affecting the Mortgaged Property. The provisions of this Section 1.21 shall be in addition to any and all obligations and liabilities Mortgagor may have to Mortgagee at common law and shall survive repayment of the Mortgage Amount and the transactions contemplated herein. The indemnities herein shall not apply with respect to any Hazardous Materials which are conclusively proven to have been first introduced on or at the Mortgaged Property after the Mortgagee or any third party claiming by, through or under the Mortgagee acquires title to the Mortgaged Property or assumes full control of day-to-day business operations at the Mortgaged Property. For purposes of this Section 1.21, the term "Permitted Hazardous Materials" are materials classified by applicable Environmental Laws as Hazardous Materials, but which applicable Environmental Laws permit Mortgagor to use, generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process at the Premises in the ordinary course of Mortgagor's business as a health care facility, in accordance with the requirements of the Environmental Laws. Mortgagor expressly agrees that the acknowledgment of Mortgagor's potential or actual use, generation, manufacture, refining, transportation, treatment, storage, handling, disposal, transfer, production or processing of Hazardous Materials in accordance with applicable Environmental Laws in the ordinary course of Mortgagor's business as a health care facility shall, in no event, operate or serve as the basis for a defense to any indemnity claim made by Mortgagee pursuant to this Mortgage or any other Document.

Section 1.22 Easements and Instruments of Record. Mortgagor will promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Property, noncompliance with which shall affect the security of this Mortgage, or shall impose any duty or obligation upon Mortgagor or any lessee or other occupant of the Mortgaged Property or any part thereof, and Mortgagor shall do or cause to

be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Mortgaged Property.

Section 1.23 Right of Entry. Mortgagee and its authorized representatives and designees shall have the right at all reasonable times during usual business hours and following reasonable prior notice, or as otherwise required in the event of an emergency, to enter upon and inspect all portions of the Mortgaged Property.

Section 1.24 Flood Hazard. Mortgagor hereby represents that the Premises do not comprise property identified by any governmental department agency as an area having special flood hazards. If the Premises at any time are so identified by any governmental department or agency as having special flood hazards, Mortgagor will keep the Premises insured against loss by flood hazards in an amount at least equal to the outstanding principal balance of the Note secured by this Mortgage, or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973, whichever is less.

Section 1.25 Certain Representations and Warranties. Mortgagor represents and warrants to Mortgagee that: (a) the Documents are all valid, binding and enforceable obligations of Mortgagor; (b) there is no action, suit or proceeding threatened against or affecting Mortgagor or the Mortgaged Property which could materially adversely affect Mortgagor or the Mortgaged Property; (c) all laws and governmental and private restrictions affecting Mortgagor or the Mortgaged Property have been complied with, and all governmental and private consents necessary to Mortgagor's consummation of the loan secured hereby have been obtained; (d) Mortgagor is not in violation of (i) any law, rule, regulation, order, writ, judgment, decree, determination or award applicable to it, or (ii) any provision of any indenture, lease, loan or other agreement to which it is a party or by which it or its properties may be bound, which violation would have an adverse effect upon Mortgagor's ability to perform any of its obligations under the Documents; (e) the statements, information and reports furnished to Mortgagee in connection with the loan secured hereby are accurate, correct and complete in all respects; (f) there are no delinquent taxes, ground rents, water charges, sewer rents, assessments (including assessments payable in future installments) or other outstanding charges affecting the Mortgaged Property; (g) the Mortgaged Property is separately assessed for tax purposes; (h) Mortgagor has filed all federal, state, county and municipal tax returns and annual reports required to be filed by it, and has paid all taxes and fees which have become due pursuant to such returns and reports or pursuant to any assessments related thereto, and Mortgagor does not know of any basis for any additional assessment in respect thereof; (i) each party to the Note, the Mortgage and all other Documents had legal capacity to enter into, execute and deliver the same, and the Note, Mortgage and all other Documents have been duly and properly executed and delivered by such parties; (j) all proceeds of the loan secured hereby have been disbursed by Mortgagee, and Mortgagee has no further obligation to make additional disbursements of loan proceeds; (k) all costs, fees and expenses payable to Mortgagee in connection with making the loan secured hereby have been paid; (l) there are no mechanics' or similar liens or claims which have been filed for work, labor or material, or which relate to the existence or cleanup of any Hazardous Materials affecting the Mortgaged Property, which are or may be liens prior to, or equal or coordinate with, the lien of this Mortgage; (m) all Improvements are wholly within the boundaries and building restriction lines of the Premises, except as described on the title policy and as shown on the survey(s) delivered to Mortgagee in connection herewith, and no improvements on adjoining

properties encroach upon the Mortgaged Property, except as described in the title policy and as shown on the survey(s) delivered to Mortgagee in connection herewith, and no covenants, conditions and restrictions, if any, are violated by the Improvements, and no future violations could give rise to any rights of reverter or reentry; (n) except for risks inherent with the ordinary course of operation of a health care facility, Mortgagor has no knowledge of any circumstance or condition with respect to the Mortgage, the Mortgaged Property or use thereof, Mortgagor's credit standing, any Lease or any tenant's credit standing that can reasonably be expected to cause private institutional investors to regard the loan evidenced by the Note and secured hereby to be an unacceptable investment, cause such loan to become delinquent, or materially adversely affect the value or marketability of such loan; and (o) all leases, licenses or other agreements pursuant to which any person or entity is entitled to use or occupy any portion of the Mortgaged Property are subject and subordinate to this Mortgage.

Section 1.2c. Vaults. Mortgagor shall at all times comply with all applicable laws with respect to the construction, use and maintenance of any vaults adjacent to the Mortgaged Property. If by reason of the failure of payment of taxes, vault rents, permit fees or assessments, Mortgagor's right to use the vaults, if any, adjacent to the Mortgaged Property may be discontinued, Mortgagor shall take such steps (including making any such payment) as may be necessary to insure that such vaults may continue to be used in connection with the use, operation and maintenance of the Mortgaged Property.

## ARTICLE II

### EVENTS OF DEFAULT AND REMEDIES

Section 2.1 Events of Default and Remedies. If one or more of the following Events of Default shall happen:

(a) default shall be made in the payment of any tax required by Section 1.7 to be paid, and said default shall have continued for a period of ten (10) days, or if default shall be made in the due observance or performance of any covenant or agreement on the part of Mortgagor contained in Section 1.1, 1.9, 1.14, 1.20, 1.21 or 1.22 hereof (for the purposes of this clause, and for subparagraph (b) below, if any representation made in Section 1.1 shall be incorrect, it shall be deemed to be a default); or

(b) except as set forth in Section 2.1(a) hereof, if default shall be made in the due observance or performance of any covenant or agreement on the part of Mortgagor contained herein and such default shall have continued for a period of thirty (30) days after written notice from Mortgagee to Mortgagor; or

(c) if (i) any Event of Default shall occur under the Loan Agreement or any of the other Documents, or (ii) if any such Documents shall not contain "Events of Default", then if default shall be made in the due observance, performance or fulfillment of any other covenant or condition on the part of Mortgagor contained in any such Document, and such default shall have continued for a period of thirty (30) days after written notice from Mortgagee to Mortgagor; or

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(d) if it shall be illegal for Mortgagor to pay any tax referred to in Section 1.7 hereof, or if the payment of such tax by Mortgagor would result in a violation of the usury laws of the jurisdiction in which the Premises are located; or

(e) if the holder of a junior or senior mortgage or other lien or encumbrance on the Mortgaged Property, or any part thereof, institutes foreclosure or other proceedings for the enforcement of its remedies thereunder, which foreclosure or other proceedings are not discharged (without affecting the Mortgaged Property) or bonded within thirty (30) days from the institution thereof (this subsection (f) shall not be construed to imply that Mortgagee consents to any junior or senior lien or encumbrance); or

(f) if any easement over, across or under or otherwise affecting the Mortgaged Property or any portion thereof shall be granted without Mortgagee's prior written consent;

(g) if any of the events specified in subparagraphs (d), (e), (f) and/or (g) shall occur with respect to any guarantor or surety of any of the obligations secured by this Mortgage;

then and in every such case:

(i) Mortgagee may declare the entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, to be due and payable immediately, and upon any such declaration the principal of the Note and said accrued and unpaid interest, together with all other fees and charges payable in connection with the indebtedness evidenced by the Note, shall become and be immediately due and payable, anything in the Note or in this Mortgage or any other Document to the contrary notwithstanding;

(ii) To the extent permitted by applicable law, Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Mortgaged Property and each and every part thereof, and may exclude Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may use, and operate, manage and control the Mortgaged Property or any part thereof and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, Mortgagee, at the expense of Mortgagor, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, whereof it shall become possessed as aforesaid, may complete the construction of the Improvements, if applicable, and in the course of such completion may make such changes in the contemplated Improvements as it may deem desirable, and may insure the same; and likewise, from time to time, at the expense of Mortgagor, Mortgagee may make all necessary or proper repairs, renewals and replacements, and such useful alterations, additions, betterments and improvements thereto and thereon, as to it may seem advisable; and in every such case Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of Mortgagor with respect thereto either in the name of Mortgagor or otherwise, as Mortgagee shall deem best; and Mortgagee shall be entitled to collect and receive all gross receipts, earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof, all of which shall for all purposes constitute property of Mortgagee; and after deducting the expenses of

conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it properly engaged and employed, Mortgagee may apply the moneys arising as aforesaid in such manner and at such times as Mortgagee shall determine in its discretion to the payment of the indebtedness secured hereby and the interest thereon, when and as the same shall become payable and/or to the payment of any other sums required to be paid by Mortgagor under this Mortgage or any Document; and

(iii) Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may:

I. sell the Mortgaged Property or any part thereof, by judicial foreclosure or otherwise, to the extent permitted by the Illinois Mortgage Foreclosure Law and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, at one or more sales, as an entity or in parcels, and at such time and place, upon such terms, and after such notice thereof as may be required or permitted by law; or

II. institute proceedings for the complete or partial foreclosure of this Mortgage; or

III. take such steps to protect and enforce its rights, whether by action, suit or proceeding in equity or at law, for the specific performance of any covenant, condition or agreement in the Note, this Mortgage or any other Document, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy as Mortgagee shall elect.

## Section 2.2 Foreclosure Sale.

(a) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) Upon the completion of any sale or sales made under or by virtue of this Article II and/or applicable law, Mortgagee, or any officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument or instruments conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of any part of the Mortgaged Property and rights so sold. Mortgagee may, for such purpose, execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Mortgagor, if so requested by Mortgagee, shall ratify and confirm any such sale or sales by executing



and delivering to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for the purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Article II and/or pursuant to applicable law, whether made by virtue of judicial proceedings or a judgment or decree of foreclosure and sale or otherwise, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties, interests and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same or any part thereof from, through or under Mortgagor.

(c) In the event of any sale made under or by virtue of this Article II and/or pursuant to applicable law (whether made by virtue of judicial proceedings or a judgment or decree of foreclosure and sale or otherwise), the entire principal of and interest on the Note, if not previously due and payable, and all other sums required to be paid by Mortgagor pursuant to this Mortgage and/or any other Document, immediately thereupon shall, anything in the Note, this Mortgage or any other Document to the contrary notwithstanding, become due and payable.

(d) To the extent permitted by applicable law, the purchase money proceeds or avails of any sale made under or by virtue of this Article II and/or pursuant to applicable law, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this Article II or otherwise, shall be applied as follows:

First: to the payment of the costs and expenses of such sale, including reasonable compensation to Mortgagee, its agents and attorneys, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, together with interest at the Default Rate on all advances made by Mortgagee and all taxes or assessments paid by Mortgagee, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold;

Second: to the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest, with interest on the unpaid principal at the Default Rate from and after the happening of any default described in clause (a) (i), (ii) or (iii) of Section 2.1 from the due date of any such payment of principal until the same is paid;

Third: to the payment of any other sums required to be paid by Mortgagor pursuant to any provision of this Mortgage, the Note, or any other Document, all with interest at the Default Rate, from the date such sums were or are required to be paid under this Mortgage, the Note or the other Documents; and

Fourth: to the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

(e) Upon any sale made under or by virtue of this Article II and/or pursuant to applicable law, whether made by virtue of judicial proceedings or a judgment or decree of foreclosure and sale or otherwise, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of Mortgagor secured by this Mortgage the net sales price, after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

Section 2.3 Payment of Indebtedness After Default.

(a) If an Event of Default shall have occurred, then upon written demand of Mortgagee, Mortgagor will pay to Mortgagee the whole amount which then shall have become due and payable on the Note, for principal and interest or both, or any other sums due under any of the Documents, as the case may be, and after the happening of said Event of Default will also pay to Mortgagee interest at the Default Rate on the then unpaid principal of the Note, and the sums required to be paid by Mortgagor pursuant to any provision of this Mortgage, and in addition thereto such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to Mortgagee, its agents and attorneys, and any expenses incurred by Mortgagee hereunder. In the event Mortgagor shall fail forthwith to pay such amounts upon such demand, Mortgagee shall be entitled and empowered to institute such action or proceedings at law or in equity as may be advised by its counsel for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree and may enforce any such judgment or final decree against Mortgagor and collect out of the property of Mortgagor wherever situated, as well as out of the Mortgaged Property, in any manner provided by law, moneys adjudged or decreed to be payable with interest thereon at the Default Rate.

(b) Mortgagee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage. The right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure of the lien hereof. In the event of a sale of the Mortgaged Property or any part thereof and of the application of the proceeds of sale, as in this Mortgage provided, to the payment of the indebtedness hereby secured, Mortgagee shall be entitled to (i) enforce payment of, and to receive all amounts then remaining due and unpaid upon, the Note, (ii) enforce payment of all other charges, payments and costs due under this Mortgage, and (iii) recover judgment for any portion of the debt remaining unpaid, with interest thereon at the Default Rate. In case of proceedings against Mortgagor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, then Mortgagee shall be entitled to prove the whole amount of principal and interest due upon the Note to the full amount thereof, and all other payments, charges and costs due under this Mortgage, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property, provided, however, that in no case shall Mortgagee receive a greater amount than such principal and interest and such other payments, charges and costs from the aggregate amount of the proceeds of the sale of the Mortgaged Property or any part thereof and the distribution from the estate of Mortgagor.

(c) No recovery of any judgment by Mortgagee and no levy of any execution under any judgment upon the Mortgaged Property or upon any other property of

Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(d) Any moneys thus collected by Mortgagee under this Section 2.3 shall be applied by Mortgagee in accordance with the provisions of paragraph (d) of Section 2.2.

Section 2.4 Waiver of Personal Service; Appointment of Receiver. Mortgagor, to the extent not prohibited by applicable law, does hereby (a) waive personal service of process and consent to service by certified mail to the address of Mortgagor set forth on the cover page of this Mortgage (with copies to be sent as provided in Section 3.3), and (b) if requested by Mortgagee, consents to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, or any business or businesses conducted thereon, and of all the earnings, revenues, rents, issues, profits and income thereof. After the happening of any Event of Default, or upon the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance hereof, or upon the commencement of any other judicial proceeding to enforce any right of Mortgagee, or in aid of any of the foregoing, Mortgagee shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for Mortgage indebtedness, forthwith either before or after declaring the unpaid principal of the Note to be due and payable, to the appointment of a receiver or receivers.

Section 2.5 Possession of Premises. Notwithstanding the appointment of any receiver, liquidator or trustee of Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Mortgage, to the extent not prohibited by applicable law.

Section 2.6 Remedies Cumulative. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute. No delay or omission of Mortgagee in exercising any right or power accruing upon any Event of Default shall impair any such rights or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. Nothing in this Mortgage or in the Note shall affect the obligation of Mortgagor to pay the principal of, and interest on, the Note in the manner and at the time and place therein respectively expressed.

Section 2.7 No Stay; Exemption or Moratorium. To the extent not prohibited by applicable law, Mortgagor will not at any time insist upon, plead or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, whether now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, and shall suffer and

permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property or any part thereof marshaled upon any foreclosure hereof.

Section 2.8 Rent During an Event of Default. To the extent permitted by applicable law, Mortgagor agrees that during the continuance of any Event of Default and pending the exercise by Mortgagee of its right to exclude Mortgagor from all or any part of the Premises, Mortgagor shall pay the fair and reasonable rental value for the use and occupancy of the Premises or any portion thereof which are in its possession for such period and, upon default of any such payment, will vacate and surrender possession of the Premises to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery of possession of premises for non-payment of rent, however designated.

Section 2.9 Waiver of Right of Redemption. Mortgagor acknowledges that the Mortgaged Property is not "agricultural real estate" or "residential real estate" as those terms are defined in the Illinois Mortgage Foreclosure Law, and waives, to the fullest extent permitted by the provisions of the statutes and 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 subsequent to the date of this Mortgage, and on behalf of all other persons, any and all rights of redemption under any order or decree of foreclosure and disclaims any status or rights which it may have as an "owner of redemption" as that term may be defined in the Illinois Mortgage Foreclosure Law.

### ARTICLE III

#### MISCELLANEOUS

Section 3.1 Binding Obligations. All of the grants, covenants, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the successors and assigns of Mortgagor and the successors and assigns of Mortgagee. If there be more than one mortgagor, the representations, covenants and warranties hereof shall be joint and several. As used herein, the singular shall include the plural as the context requires.

Section 3.2 Severability. In the event any one or more of the provisions contained in this Mortgage, in the Note or in any other Document shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Section 3.3 Notices. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given to the parties if given in accordance with the notice provisions set forth in the Loan Agreement.

Section 3.4 Waiver of Notice. Whenever in this Mortgage the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice. Mortgagor shall not be entitled to any notices of any nature

whatsoever from Mortgagee, except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

Section 3.5 Assignment. This Mortgage, and any instruments made in connection herewith, may be assigned by Mortgagee without notice to or the consent of Mortgagor or any other party.

Section 3.6 Incorporation of Information. The information set forth on the cover hereof is hereby incorporated herein.

Section 3.7 Default Rate. The Default Rate provided for herein shall continue to accrue and be paid on any amount to which the Default Rate is applied, until said amount is paid in full.

Section 3.8 Applicable Law. This Mortgage shall be governed by, and construed, enforced and interpreted according to the laws of the jurisdiction in which the Premises are located, without giving effect to the principles of conflicts of law.

Section 3.9 No Oral Modification. Neither this Mortgage nor any provision hereof may be changed, waived, modified, discharged or terminated, except by an instrument in writing signed by Mortgagee.

Section 3.10 Security Agreement. This Mortgage constitutes both a real property mortgage and a "security agreement", within the meaning of the Uniform Commercial Code, and the Mortgaged Property includes both real and personal property and all other rights and interests of Mortgagor in the Mortgaged Property, whether tangible or intangible in nature. By executing and delivering this Mortgage, Mortgagor has granted to Mortgagee, as security for the Note, a security interest in the Chattels and any other personal property described herein as being subject to a lien in favor of Mortgagor. If Mortgagor shall default under the Note and/or this Mortgage, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Chattels or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Chattels. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Chattels and make them available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Chattels and in enforcing its rights hereunder with respect to the Chattels. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Chattels sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute reasonable notice to Mortgagor. The proceeds of any disposition of the Chattels, or any part thereof, may be applied by Mortgagee to the payment of the Note and any other obligations of Mortgagor secured hereby in such priority and proportions as Mortgagee in its discretion shall deem proper. The security agreement created by this Mortgage shall continue and



remain in full force and effect during any foreclosure proceedings relating to this Mortgage and the period of redemption, if any, until all sums secured by this Mortgage, together with interest thereon, shall have been paid in full.

Section 3.11 Attorneys' Fees. Wherever "attorneys' or counsel fees" or similar references are made herein, it shall include disbursements and such fees incurred out of court and in litigation, including, without limitation, pre-trial, appellate and bankruptcy proceedings.

Section 3.12 Mortgagee's Consent and Approval. If Mortgagor shall request Mortgagee's consent or approval pursuant to any of the provisions of this Mortgage or otherwise, and Mortgagee shall fail or refuse to give, or shall delay in giving, such consent or approval, Mortgagor shall in no event make, or be entitled to make, any claim for damages (nor shall Mortgagor assert, or be entitled to assert, any such claim by way of defense, set-off or counterclaim) based upon any claim or assertion by Mortgagor that Mortgagee unreasonably withheld or delayed its consent or approval, and Mortgagor hereby waives any and all rights that it may have from whatever source derived to make or assert any such claim. Mortgagor's sole remedy for any such failure, refusal or delay shall be an action for a declaratory judgment, specific performance or injunction, and such remedies shall be available only in those instances where Mortgagee has expressly agreed in writing not to unreasonably withhold or delay its consent or approval or where, as a matter of law, Mortgagee may not unreasonably withhold or delay the same.

Section 3.13 Inclusion of Subtenants. Whenever reference is made in this Mortgage to a lease, lessee, tenancy or tenant, such reference shall be deemed to include a sublease, sublessee, subtenancy or subtenant, as the case may be.

Section 3.14 Counterparts. This Mortgage may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same Mortgage.

Section 3.15 Default Under Additional Security. If the payment of the mortgage indebtedness is now or hereafter further secured by assignments of leases or rentals, security agreements, financing statements, mortgages, collateral assignments, pledges, contracts of guaranty or other additional security documents, any default under the provisions of any such further security documents shall constitute and be a default under this Mortgage, and Mortgagee may, at its option, exhaust any one or more of the said security documents and the security thereunder, as well as the Mortgaged Property covered by this Mortgage, either concurrently or independently and in such other and further manner as Mortgagee may elect, and Mortgagee may apply the proceeds received therefrom upon the mortgage indebtedness without waiving or affecting Mortgagee's rights and remedies under this Mortgage or any other Document, whether exercised or not.

Section 3.16 Legal Interest Rate. Nothing herein, nor any transaction related hereto, shall be construed or operate so as to require Mortgagor to pay interest at a greater rate than shall be lawful. Should any interest or other charges paid by Mortgagor in connection with the loan evidenced by the Note result in the computation or earning of interest in excess of the maximum legal rate of interest which is legally permitted under the laws of the State of Illinois or other applicable law, after taking into account all provisions of the Note and the Documents, then any and all such excess shall be, and the same is hereby, waived by Mortgagee, and any and all such excess

shall be automatically credited against and in reduction of the balance due under the indebtedness secured hereby, and any portion which exceeds the balance due under the Note and secured hereby shall be paid by Mortgagee to Mortgagor. At the maturity of the Note secured hereby (or prior thereto, in the event of any permitted prepayment, or if Mortgagee accelerates payment thereof), if the total amount of interest paid, including any service fee and any other charge upon the principal, exceeds the maximum legal contract rate permitted by law, such interest shall be recomputed and any such excess shall be credited to principal or returned to Mortgagor. It is the intent of the parties hereto that Mortgagor, under no circumstances, shall be required to pay, nor shall Mortgagee be entitled to collect, any interest which is in excess of the maximum legal rate permitted under applicable laws.

Section 3.17 No Joint Venture. Nothing contained herein shall create any joint venture, partnership, agency or trust arrangement between Mortgagor and Mortgagee.

Section 3.18 WAIVER OF TRIAL BY JURY. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY IRREVOCABLY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING BROUGHT BY MORTGAGOR OR MORTGAGEE INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED WITH THIS MORTGAGE, THE NOTE OR ANY OTHER DOCUMENT AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY IRREVOCABLY WAIVES IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY MORTGAGEE UNDER THIS MORTGAGE, THE NOTE OR ANY OTHER DOCUMENT, ANY AND EVERY RIGHT IT MAY HAVE TO, (I) INTERPOSE ANY COUNTERCLAIM THEREIN AND (II) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING HEREIN CONTAINED SHALL PREVENT OR PROHIBIT MORTGAGOR FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST MORTGAGEE WITH RESPECT TO ANY ASSERTED CLAIM.

Section 3.19 Set-Off. Mortgagor agrees that, in addition to (and without limitation of) any right of set-off, bankers' lien or counterclaim Mortgagee may otherwise have, Mortgagee shall be entitled, at its option, to offset balances held by it for the account of Mortgagor in any of its offices, in lawful money of the United States of America or in any other currency, against any principal of or interest on the Note, or any other obligation of Mortgagor held by Mortgagee, which is not paid when due.

Section 3.20 Recovery of Sums Required To Be Paid. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the indebtedness secured hereby as the same becomes due, without regard to whether or not the balance of such indebtedness shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

Section 3.21 Marshaling. Mortgagor waives and releases, to the fullest extent permitted by law and with awareness of the consequences thereof, any right to have the Mortgaged Property marshaled.

Section 3.22 Headings. The headings and captions of the various Articles and Sections of this Mortgage, and the table of contents, are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 3.23 Future Advances. This Mortgage secures future advances. All future advances under the Note, this Mortgage and the Loan Documents shall have the same priority as if the future advance was made on the date that this Mortgage was recorded. This Mortgage shall secure all indebtedness of Mortgagor, its successors and assigns under the Note, this Mortgage or any of the other Loan Documents, whenever incurred. Notice is hereby given that the indebtedness secured hereby may increase as a result of any defaults hereunder by Mortgagor due to, for example, and without limitation, unpaid interest or late charges, unpaid taxes or insurance premiums which Mortgagee elects to advance, defaults under leases that Mortgagee elects to cure, attorney fees or costs incurred in enforcing the Loan Documents or other expenses incurred by Mortgagee in protecting Mortgagee's rights and interests. The unpaid principal balance, together with all due but unpaid interest, will be paid in a lump sum balloon payment on the maturity date of the Note.

Section 3.24 Loan Guarantee Agreement. Mortgagor acknowledges that Mortgagee and HRSA have entered into the Loan Guarantee Agreement pursuant to which Mortgagee and HRSA have made certain agreements with respect to when Mortgagee will exercise its remedies hereunder, under the Loan Agreement and under the other Loan Documents and applicable law. Mortgagor hereby agrees that it is not a third-party beneficiary of the Loan Guarantee Agreement.

Section 3.25 Release of Strip Parcel. Mortgagor has advised Mortgagee that it intends to divide the Premises into two (2) separate tax lots referred to herein as the "Developed Parcel" and "Strip Parcel", as more particularly described in Exhibit "C" hereto, each with its own tax identification number, and has requested that Mortgagee release the Strip Parcel from the lien of this Mortgage when the tax lot division is completed. Mortgagee agrees to execute and deliver a partial release of the Strip Parcel from the lien of this Mortgage, provided that all of the following conditions precedent shall have been satisfied (it being understood that Mortgagee shall be under no obligation whatsoever to execute a partial release unless and until all of the following conditions precedent are or have been fully satisfied as of the time of such request):

(a) Mortgagor shall have delivered to Mortgagee a written request for partial release on a date to be fixed in such request not sooner than ten (10) days from the receipt of such request, together with any documentation required to effect the partial release;

(b) Mortgagor shall have furnished evidence satisfactory to Mortgagee in all respects that the division of the Premises into separate tax lots has been effected in compliance with all applicable laws and that (i) the legal description of the Developed Parcel as set forth in Exhibit "C" hereto, is identical to the legal description of the separate tax parcel created and assigned a property index number; and (ii) Mortgagee's interest in the Developed Parcel shall otherwise be and remain subject to the lien of this Mortgage;

(c) the Note shall be current in all respects and Mortgagor shall not be in default under any of the terms, conditions or provisions of this Mortgage, the Note or any other Document;

(d) Mortgagor and Mortgagee execute and cause to be recorded among the land records of Cook County, Illinois a mortgage modification agreement that, among other things, substitutes for the legal description attached to this Mortgage as Exhibit "A", the legal description of the Developed Parcel in Exhibit "C" (provided the same complies with clause (b) above); and

(e) If required by Mortgagee, the title insurance company insuring the lien of this Mortgage shall issue to Mortgagee an endorsement to the title insurance policy covering this Mortgage relating to the release of the Strip Parcel and the continuing lien on the Developed Parcel.

IN WITNESS WHEREOF, this Mortgage has been duly executed by Mortgagor as of the day and year first above written.

Alivio Medical Center, Inc.

By: Robert MARTINEZ  
Name: Robert Martinez  
Title: Board President

By: Edward T. McNamara  
Name: EDWARD T. MC NAMARA  
Title: BOARD TREASURER

# UNOFFICIAL COPY

30439013

State of Illinois )  
 )ss:  
County of Cook )

I, GILBERT HALL, a Notary Public in and for the County and State aforesaid, do hereby certify that PETER MARTINEZ ~~PRESIDENT~~ of Alivio Medical Center, Inc., an Illinois not-for-profit corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such PETER MARTINEZ, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary acts 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 24 day of March, 2003.

Gilbert L. Hall  
NOTARY PUBLIC

My Commission Expires: 09-02-2006

State of Illinois )  
 )ss:  
County of Cook )

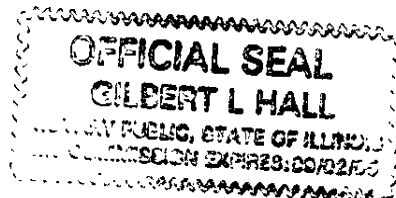


I, GILBERT HALL, a Notary Public in and for the County and State aforesaid, do hereby certify that EDUARDO MCNAMARA ~~TREASURER~~ of Alivio Medical Center, Inc., an Illinois not-for-profit corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such EDUARDO MCNAMARA, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary acts 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 24 day of March, 2003.

Gilbert L. Hall  
NOTARY PUBLIC

My Commission Expires: 09-02-06





# UNOFFICIAL COPY

**30439013**

EXHIBIT "A"

[Legal Description of the Premises]

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

30439013

EXHIBIT "A"

[Legal Description]

[Premises]

BLOCK 18 (EXCEPT THE NORTH 220.80 FEET) IN WALSH AND MCMULLIN'S  
SUBDIVISION OF THE SOUTH 3/4 OF THE SOUTHEAST 1/4 OF SECTION 20,  
TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN  
COOK COUNTY, ILLINOIS.

Property Index No.: 17-20-433-006-0000

Property of Cook County Clerk's Office

EXHIBIT "B"  
[Environmental Reports]

1. Final Report Environmental Site Assessment (Phase I) dated September 13, 1994, prepared by HazChem Environmental Corporation.
2. Reliance Letter for Professional Services and UST Removal/LUST Closure Activities Report, dated January 17, 1997, prepared by ERM-EnviroClean-North Central, Inc.
3. "No Further Action" letter dated December 17, 1996 from the State of Illinois Environmental Protection Agency to Regent Investment Corporation (LPC#0316595044-Cook County), LUST Incident No. 960735.

“EXHIBIT C”

[Legal Descriptions of Developed Parcel and Strip Parcel]

Parcel 1 (the “Developed Parcel”):

THE SOUTH 130 FEET OF BLOCK 18 IN WALSH AND MCMULLIN’S SUBDIVISION OF THE SOUTH 3/4 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel 2 (the “Strip Parcel”):

BLOCK 18 (EXCEPT THE NORTH 220.80 FEET AND EXCEPT THE SOUTH 130 FEET) IN WALSH AND MCMULLIN’S SUBDIVISION OF THE SOUTH 3/4 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office