

Regulatory Agreement  
Nursing Homes

U.S. Department of Housing  
and Urban Development  
Office of Housing  
Federal Housing Commissioner

Project Number 071-43181		Mortgagee Capstone Realty Advisors, LLC, an Ohio limited liability company	
Amount of Mortgage Note \$9,225,000.00		Date April 1, 2003	
Mortgage Recorded (State) Illinois	County Cook	Date April 17, 2003	
Book		Page	

This Agreement entered into as of this 1st day of April, 2003

between GOLFVIEW DEVELOPMENTAL CENTER, INC., an Illinois corporation

whose address is 225 W. Wacker Drive, Suite 2800, Chicago, Illinois 60606



0310703088

Eugene "Gene" Moore Fee: \$102.00  
Cook County Recorder of Deeds  
Date: 04/17/2003 01:29 PM Pg: 1 of 16

(jointly and severally, hereinafter referred to as Lessee) and the undersigned Federal Housing Commissioner, (hereinafter called Commissioner).

In consideration of the consent of the Commissioner to the leasing of the aforesaid project by GOLFVIEW REALTY PARTNERSHIP, an Illinois general partnership, Mortgagor, and in order to comply with the requirements of the National Housing Act and the Regulations adopted by the Commissioner pursuant thereto, Lessees agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the Contract of Mortgage Insurance continues in effect and during such further period of time as the Commissioner shall be the owner, holder or reinsurer of the mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property:

TICOR TITLE INSURANCE

- (1) The lease shall be subject and subordinate to the mortgage securing the note or other obligation endorsed for insurance by the commissioner;
- (2) Lessee shall make payments under lease when due;
- (3) Payments by the lessee to the lessor shall be sufficient to pay all mortgage payments including payments to reserves for taxes, insurance, etc., payments to the Reserve for Replacements, and to take care of necessary maintenance. If at the end of any calendar year, or any fiscal year if the project operates on the basis of a fiscal year, payments under the lease have not been sufficient to take care of the above items, the lessor and lessee upon request in writing from the Commissioner shall renegotiate the amounts due under the lease so that such amounts shall be sufficient to take care of such items; the Commissioner shall be furnished by the lessee, within thirty days after being called upon to do so, with a financial report in form satisfactory to the Commissioner covering the operations of the mortgaged property and of the project;
- (4) The lessee shall not sublease the project or any part thereof without the consent of the Commissioner;
- (5) The lessee shall at all times maintain in full force and effect a license from the State or other licensing authority to operate the project as a nursing home, but the owner shall not be required to maintain such a license;
- (6) Lessee shall maintain in good repair and condition any parts of the project for the maintenance of which lessee is responsible under the terms of the lease;
- (7) Lessee shall not remodel, reconstruct, add to, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;
- (8) Lessee shall not use the project for any purpose except the operation of a nursing home;
- (9) If a default is declared by the Commissioner under the provisions of Paragraph 10 of the Regulatory Agreement entered into by the lessor-mortgagor and the Commissioner on the 1st day of April, 2003, a copy of notice of default having been given to the lessee, the lessee will thereafter make all future payments under the lease to the Commissioner;
- (10) The lease may be cancelled upon thirty days written notice by the Commissioner given to the lessor and the lessee for a violation of any of the above provisions unless the violation is corrected to the satisfaction of the Commissioner within said thirty day period.
- (11) The Commissioner must approve any change in or transfer of ownership of the lessee entity, and any change in or transfer of the management operation, or control of the project.

9900 30764 NHL / 497996

BOX 15

**UNOFFICIAL COPY**

- (12) The lessee shall not reduce or expand, allow to be reduced or expanded, or cause the expansion or reduction of the bed capacity of the project without the consent of the Commissioner. Any change in the bed capacity shall violate this Regulatory Agreement.
- (13) The lessee shall not enter into any management contract involving the project, unless such shall contain a provision that, in the event of default under the Regulatory Agreement as recited in paragraph 9 (above) of this Agreement, the management agreement shall be subject to termination without penalty upon written request of the Commissioner. Upon such request the lessee shall immediately arrange to terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Commissioner for continuing proper management of the project.
- (14) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by the Commissioner or his duly authorized agents. Lessee shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Commissioner or his/her duly authorized agents.
- (15) There shall be full compliance with the provisions of (1) any State or local laws prohibiting discrimination in housing on the basis of race, color, creed, or national origin; and (2) with the Regulations of the Federal Housing Administration providing for non-discrimination and equal opportunity in housing. It is understood and agreed that failure or refusal to comply with any such provisions shall be a proper basis for the Commissioner to take any corrective action he may deem necessary including, but not limited to, the refusal to consent to a further renewal of the lease between the mortgagor-lessor and the lessee, the rejection of applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which the lessee is identified; and further, if the lessee is a corporation or any other type of business association or organization which may fail or refuse to comply with the aforementioned provisions, the Commissioner shall have a similar right of corrective action (1) with respect to any individuals who are officers, directors, trustees, managers, partners, associates or principal stockholders of the lessee; and (2) with respect to any other type of business association, or organization with which the officers, directors, trustees, managers, partners, associates or principal stockholders of the lessee may be identified.

**Instructions to Closing Attorney****Regulatory Agreement—form HUD-92466-NHL  
Nursing Homes—Section 232**

This Regulatory Agreement must be executed by the Lessee and the Commissioner and recorded before the Note is endorsed for insurance.

Note that there is space left on the back of the printed form for proper execution of the instrument.

The execution by the Commissioner and by the Lessee must be in accordance with the requirements of the jurisdiction where the project is located and must permit the instrument to be recorded.

The Agreement is to be executed in the name of the Commissioner. It will be signed for the Commissioner by the Field Office Manager or authorized agent who endorses the Note for insurance.

Recording must be at the expense of the mortgagor-owner or lessee.

Sufficient space is left on the back for the insertion of any necessary additional provisions. Any changes in the Agreement and any substantial additions shall receive the prior approval of the Assistant Secretary for Housing.

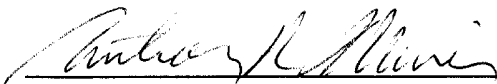
A copy of the Commissioner-approved lease shall be attached to this Regulatory Agreement. If the lease has already been filed or recorded, re-recording will be unnecessary, and a copy of the recorded lease (with recording data) will be attached following recording of the form HUD-92466-NHL.

The Agreement must be executed by the Lessee prior to execution by the Commissioner.

# UNOFFICIAL COPY

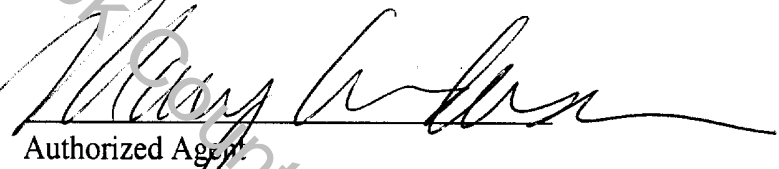
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

**GOLFVIEW DEVELOPMENTAL CENTER, INC.**  
an Illinois corporation

By:   
Anthony R. Miner  
President

April 1, 2003

**SECRETARY OF HOUSING AND URBAN  
DEVELOPMENT ACTING BY AND  
THROUGH THE FEDERAL HOUSING  
COMMISSIONER**

By:   
Authorized Agent

April 1, 2003

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING SHOULD  
PLEASE BE RETURNED TO:

Deborah A. Turner, Esq.  
Krooth & Altman LLP  
1850 M Street, N.W., Suite 400  
Washington, D.C. 20036-5803  
[202] 293-8200

Attachment: Lessee-Operator Lease  
with Deed

# UNOFFICIAL COPY

## ACKNOWLEDGMENTS

State of Illinois                    ]  
   ] ss:  
 County of Cook                    ]

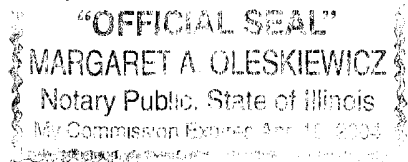
I, MARGARET A. OLESKIEWICZ, a Notary Public in and for the State and County aforesaid, do hereby certify that on April 17, 2003, personally appeared before me Anthony R. Miner, known to me (or satisfactorily proven) to be the President of **GOLFVIEW DEVELOPMENTAL CENTER, INC.**, an Illinois corporation, whose name is signed to the foregoing and annexed instrument bearing date of April 1, 2003, and did acknowledge said instrument to be the act and deed of the said **GOLFVIEW DEVELOPMENTAL CENTER, INC.**, for the purposes therein contained.

WITNESS my hand and official seal.

[SEAL]

Margaret A. Oleskiewicz  
 Notary Public

My Commission Expires: 4/18/2004



STATE OF ILLINOIS                    ]  
   ] ss:  
 COUNTY OF Cook                    ]

Before me, a Notary Public in and for the said County and State, personally appeared Mary Anderson, known to me and to be the person who, as the duly Authorized Agent of the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT ACTING BY AND THROUGH THE FEDERAL HOUSING COMMISSIONER**, who executed the foregoing Regulatory Agreement by virtue of the authority vested in him/her as such authorized agent, and he/she acknowledged to me that he/she did sign said Regulatory Agreement on behalf of the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT ACTING BY AND THROUGH THE FEDERAL HOUSING COMMISSIONER** as such authorized agent for the purposes therein contained.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and official seal in said County, State of Illinois, this 17<sup>th</sup> day of April, 2003.

[SEAL]

Linda Bell  
 Notary Public

My Commission Expires: 12/11/05



# UNOFFICIAL COPY

## EXHIBIT A

The North 300.05 feet (except the East 200.05 feet thereof and that part used for Golf Road) of the East 1/2 of the Northwest 1/4 of the Northwest 1/4 of Section 15, Township 41 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

**Commonly Known as** 9555 W. Golf Road  
Des Plaines, Illinois 60016

**Property Index Number:** 09-15-100-012-0000 and 09-15-100-013-0000

Property of Cook County Clerk's Office

**UNOFFICIAL COPY**

Prepared by:  
 Howard M. Richard  
 Katten Muchin Zavis Rosenman  
 525 West Monroe Street  
 Suite 1600  
 Chicago, IL 60661

(Reserved for Recorder's Use Only)

**TRUSTEE'S DEED**

THIS INDENTURE, dated April 15, 2003, between **AMALGAMATED BANK OF CHICAGO**, duly authorized to accept and execute trusts within the State of Illinois, and not personally but as Trustee of that certain Trust dated September 15, 1977, and known as Trust Number 3332 ("Grantor") and **GOLFVIEW REALTY PARTNERSHIP**, an Illinois partnership ("Grantee").

WITNESSETH, that Grantor, in consideration of the sum of TEN (\$10.00) Dollars and other good and valuable consideration in hand paid, does hereby convey and **QUIT-CLAIM** unto Grantee, and its legal representatives, successors, successors in title and assigns the following described real estate, situated in Chicago, Cook County, Illinois, to-wit:

The North 300.05 feet (except the East 200.05 feet thereof and that part used for Golf Road) of the East 1/2 of the Northwest 1/4 of the Northwest 1/4 of Section 15, Township 41 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

**Commonly Known as** 9555 W. Golf Road  
 Des Plaines, Illinois 60016

Property not located in the corporate limits of the City of Des Plaines, Deed or instrument not subject to transfer tax.

**Property Index Number:** 09-15-100-012-0000 and 09-15-100-013-0000

*Sandi Kanger 4-16-03*  
 City of Des Plaines

together with the tenements and appurtenances thereunto belonging, and specifically including all rights of the Grantor as lessor under that certain Building Lease dated January 24, 1996 with Golfview Developmental Center, Inc. as lessee.

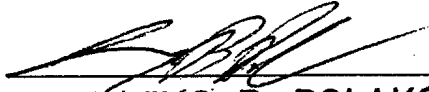
TO HAVE AND TO HOLD the same unto Grantee, and to the proper use, benefit and behoof, forever, of Grantee.

# UNOFFICIAL COPY

This deed is executed by Grantor, as Trustee, as aforesaid, pursuant to and in the exercise of the power and authority granted to and vested in it by the terms of said Deed or Deeds in Trust and the provisions of said Trust Agreement above mentioned, and of every other power and authority thereunto enabling.

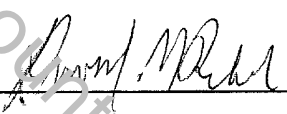
IN WITNESS WHEREOF, Grantor has caused its corporate seal to be hereto affixed, and has caused its name to be signed to these presents by one of its officers, the day and year first above written.

**AMALGAMATED BANK OF CHICAGO,**  
as successor Trustee, as aforesaid, and not personally

By:   
Name: IRVING B. POLAKOW  
Title: SENIOR VICE PRESIDENT

I hereby declare this Deed represents a transaction exempt under the provisions of ¶E, 35 ILCS 200/31-45 of the Real Estate Transfer Tax Law and Section E, Chapter 6 of the Cook County Real Property Tax Ordinance.

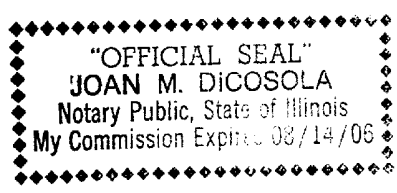
Dated: April     , 2003


Signed: 

STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County and State, do hereby certify IRVING B. POLAKOW an officer of Amalgamated Bank of Chicago, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that said officer of said association signed and delivered this instrument as a free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, dated April 16, 2003.



  
Notary Public

CAUTION: Consult a lawyer before using or acting under this form. Neither the publisher nor the seller of this form makes any warranty with respect thereto, including any warranty of merchantability or fitness for a particular purpose.

**INDUSTRIAL BUILDING LEASE**

DATE OF LEASE	TERM OF LEASE		MONTHLY RENT
	BEGINNING	ENDING	
January 24, 1996	See Section 24		\$91,478.79
Location of Premises: 9555 West Golf Road Des Plaines, Illinois			
Purpose: Nursing Home			

**LESSEE**

**LESSOR**

NAME • Goldview Developmental Center, Inc.  
ADDRESS • 9555 West Golf Road  
Des Plaines, Illinois 60016

NAME AND BUSINESS • Amalgamated Trust and Savings Bank  
not personally but as trustee  
ADDRESS • under Trust No. 3332  
One West Monroe Street  
Chicago, Illinois 60603

In consideration of the mutual covenants and agreements herein stated, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor solely for the above purpose the premises designated above (the "Premises"), together with the appurtenances thereto, for the above Term.

without limitation all pavements, equipment and structural elements, personal property and

**RENT**

1. Lessee shall pay Lessor or Lessor's agent as rent for the Premises the sum stated above, monthly in advance, until termination of this lease, at Lessor's address stated above or such other address as Lessor may designate in writing.

**CONDITION AND UPKEEP OF PREMISES**

2. Lessee has examined and knows the condition of the Premises and has received the same in good order and repair, and acknowledges that no representations as to the condition and repair thereof have been made by Lessor, or his agent, prior to or at the execution of this lease that are not herein expressed; Lessee will keep the Premises including all appurtenances, in good repair, replacing all broken glass with glass of the same size and quality as that broken, and will replace all damaged plumbing fixtures with others of equal quality, and will keep the Premises, including adjoining alleys, in a clean and healthful condition according to the applicable municipal ordinances and the direction of the proper public officers during the term of this lease at Lessee's expense, and will without injury to the roof, remove all snow and ice from the same when necessary, and will remove the snow and ice from the sidewalk abutting the Premises; and upon the termination of this lease, in any way, will yield up the Premises to Lessor, in good condition and repair, loss by fire and ordinary wear excepted, and will deliver the keys therefor at the place of payment of said rent. Occupancy of the Premises by Lessee shall constitute an acceptance thereof.

**LESSEE NOT TO MISUSE; SUBLET; ASSIGNMENT**

3. Lessee will not allow the Premises to be used for any purpose that will increase the rate of insurance thereon or for any purpose other than that hereinbefore specified, and will not load floors with machinery or goods beyond the floor load rating prescribed by applicable municipal ordinances, and will not allow the Premises to be occupied in whole, or in part, by any other person, and will not sublet the same or any part thereof, nor assign this lease without in each case the written consent of the Lessor first had, and Lessee will not permit any transfer by operation of law of the interest in the Premises acquired through this lease, and will not permit the Premises to be used for any unlawful purpose, or for any purpose that will injure the reputation of the building or increase the fire hazard of the building, or disturb the tenants or the neighborhood, and will not permit the same to remain vacant or unoccupied for more than ten consecutive days; and will not allow any signs, cards or placards to be posted or placed thereon, nor permit any alteration of or addition to any part of the Premises, except by written consent of Lessor; all alterations and additions to the Premises shall remain for the benefit of Lessor unless otherwise provided in the consent aforesaid. \*or constitute a default under any applicable mortgage or trust deed,

**MECHANIC'S LIEN**

4. Lessee will not permit any mechanic's lien or liens to be placed upon the Premises or any building or improvement thereon during the term hereof, and in case of the filing of such lien Lessee will promptly pay same. If default in payment thereof shall continue for thirty (30) days after written notice thereof from Lessor to the Lessee, the Lessor shall have the right and privilege at Lessor's option of paying the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and interest, shall be so much additional indebtedness hereunder due from Lessee to Lessor and shall be repaid to Lessor immediately on rendition of bill therefor.

**INDEMNITY FOR ACCIDENTS**

5. Lessee covenants and agrees that he will protect and save and keep the Lessor forever harmless and indemnified against and from any penalty or damages or charges imposed for any violation of any laws or ordinances, ~~not~~ occasioned by the neglect of Lessee or those holding under Lessee, and that Lessee will at all times protect, indemnify and save and keep harmless the Lessor against and from any and all loss, cost, damage or expense, arising out of or from any accident or other occurrence on or about the Premises/ causing injury to any person or property whomsoever or whatsoever and will protect, indemnify and save and keep harmless the Lessor against and from any and all claims and against and from any and all loss, cost, damage or expense arising out of any failure of Lessee in any respect to comply with and perform all the requirements and provisions hereof. \*unless due to Lessor's default or negligence

**NON-LIABILITY OF LESSOR**

6. Except as provided by Illinois statute, Lessor shall not be liable for any damage occasioned by failure to keep the Premises in repair, nor for any damage done or occasioned by or from plumbing, gas, water, sprinkler, steam or other pipes or sewerage or the bursting, leaking or running of any pipes, tank or plumbing fixtures, in, above, upon or about Premises or any building or improvement thereon nor for any damage occasioned by water, snow or ice being upon or coming through the roof, skylights, trap door or otherwise, nor for any damages arising from acts or neglect of any owners or occupants of adjacent or contiguous property.

**WATER, GAS AND ELECTRIC CHARGES**

7. Lessee will pay, in addition to the rent above specified, all water rents, gas and electric light and power bills taxed, levied or charged on the Premises, for and during the time for which this lease is granted, and in case said water rents and bills for gas, electric light and power shall not be paid when due, Lessor shall have the right to pay the same, which amounts so paid, together with any sums paid by Lessor to keep the Premises in a clean and healthy condition, as above specified, are declared to be so much additional rent and payable with the installment of rent next due thereafter.



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PAGE

**KEEP  
PREMISES  
IN REPAIR**

8. Lessor shall not be obliged to incur any expense for repairing any improvements upon said demised premises or connected therewith, and the Lessee at his own expense will keep all improvements in good repair (injury by fire, or other causes beyond Lessee's control excepted) as well as in a good tenable and wholesome condition, and will comply with all local or general regulations, laws and ordinances applicable there as well as lawful requirements of all competent authorities in that behalf. Lessee will, as far as possible, keep said improvements from deterioration due to ordinary wear and from falling temporarily out of repair. Lessee does not make repairs as required hereunder promptly and adequately. Lessor may but need not make such repairs and pay the costs thereof, and such costs shall be so much additional rent immediately due from and payable by Lessee to Lessor.

**ACCESS TO  
PREMISES**

9. Lessee will allow Lessor free access to the Premises for the purpose of examining or exhibiting same, or to make any needful repairs, or alterations thereof which Lessor may see fit to make and will allow have placed upon the Premises at all times notice of "For Sale" and "To Rent", and will not interfere with same.

**ABANDON-  
MENT AND  
RELETING**

10. If Lessee shall abandon or vacate the Premises, or if Lessee's right to occupy the Premises be terminated by Lessor by reason of Lessee's breach of any of the covenants herein, the same may be re-let by Lessor for the term and upon such terms as Lessor may deem fit, subject to Illinois statute; and if a sufficient sum shall not thus realized monthly, after paying the expenses of such re-letting and collecting to satisfy the rent hereby reserved, Lessee agrees to satisfy and pay all deficiency monthly during the remaining period of this lease.

**HOLDING  
OVER**

11. Lessee will, at the termination of this lease by lapse of time or otherwise, yield up immediate possession to Lessor, and failing so to do, will pay as liquidated damages, for the whole time such possession is withheld, the sum of \_\_\_\_\_ Dollars \_\_\_\_\_ per day; but the provisions of this clause shall not be held as a waiver by Lessor of any right of re-entry as hereinafter set forth; nor shall the receipt of said rent or any part thereof, or any other act in apparent affirmation of tenancy, operate as a waiver of the right to forfeit this lease and the term hereby granted for the period still unexpired, for a breach of any of the covenants herein.

**EXTRA  
FIRE  
HAZARD**

12. There shall not be allowed, kept, or used on the Premises any inflammable or explosive liquids or materials save such as may be necessary for use in the business of the Lessee, and in such case, any such substance shall be delivered and stored in amount, and used, in accordance with the rules of the applicable Board of Underwriters and statutes and ordinances now or hereafter in force.

**DEFAULT  
BY  
LESSEE**

13. In default be made in the payment of the above rent, or any part thereof, or in any of the covenants herein contained to be kept by the Lessee/Lessor may at any time thereafter at his election declare said lease ended and reenter the Premises or any part thereof, with or (to the extent permitted by law) without notice process of law, and remove Lessee or any persons occupying the same, without prejudice to any remedies which might otherwise be used for arrears of rent, and Lessor shall have at all times the right to distrain for rent due, and shall have a valid and first lien upon all personal property which Lessee now owns, or may hereafter acquire have an interest in, which is by law subject to such distraint, as security for payment of the rent herein reserved or if an event of default shall occur as provided in paragraph 24 hereof.

**NO RENT  
DEDUCTION  
OR SET OFF**

14. Lessee's covenant to pay rent is and shall be independent of each and every other covenant of this lease. Lessee agrees that any claim by Lessee against Lessor shall not be deducted from rent nor set off against any claim for rent in any action.

**RENT AFTER  
NOTICE  
OR SUIT**

15. It is further agreed, by the parties hereto, that after the service of notice, or the commencement of a suit or after final judgment for possession of the Premises, Lessor may receive and collect any rent due, and the payment of said rent shall not waive or affect said notice, said suit, or said judgment.

**PAYMENT OF  
COSTS**

16. Lessee will pay and discharge all reasonable costs, attorney's fees and expenses that shall be made or incurred by Lessor in enforcing the covenants and agreements of this lease.

**RIGHTS  
CUMULATIVE**

17. The rights and remedies of Lessor under this lease are cumulative. The exercise or use of any one more thereof shall not bar Lessor from exercise or use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise nor use of any right or remedy by Lessor waive any other right or remedy.

**FIRE AND  
CASUALTY**

~~18. In case the Premises shall be rendered untenable during the term of this lease by fire or other casualty, Lessor at his option may terminate the lease or repair the Premises within 60 days thereafter. If Lessor elects to repair, this lease shall remain in effect provided such repairs are completed within said time. If Lessor shall not have repaired the Premises within said time, then at the end of such time the term hereby created shall terminate. If this lease is terminated by reason of fire or casualty as herein specified, rent shall be apportioned a pro rata to the day of such fire or other casualty.~~

**SUBORDINATION**

19. This lease is subordinate to all mortgages which may now or hereafter affect the Premises.

**PLURALS;  
SUCCESSORS**

20. The words "Lessor" and "Lessee" wherever herein occurring and used shall be construed to mean "Lessors" and "Lessees" in case more than one person constitutes either party to this lease; and all the covenants and agreements contained shall be binding upon, and inure to, their respective successors, heirs, executor administrators and assigns and may be exercised by his or their attorney or agent.

**SEVERABILITY**

21. Wherever possible each provision of this lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this lease shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this lease.

# UNOFFICIAL COPY

RIDER ATTACHED TO AND MADE PART OF BUILDING LEASE DATED JANUARY 24, 1996 BETWEEN GOLVIEW DEVELOPMENTAL CENTER, INC., AS LESSEE, AND AMALGAMATED TRUST AND SAVINGS BANK TRUST NO. 3332, AS LESSOR

22. Construction. Lessor shall commence promptly and proceed diligently to redevelop the premises with a new 128 bed intermediate care nursing home facility (the "Project") to replace the existing facility, all in substantial conformity with plans and specifications prepared by Shayman, Salk, Aronson, Sussholz and Company dated May 8, 1995, captioned Golfview Developmental Center, Job #9367, HUD Project 071-43154. Lessor shall have the right to cause its contractors and personnel to enter the Premises for such purpose and shall cause the Project to be delivered to Lessee after all approvals shall have been secured from all public authorities having jurisdiction, including but not limited the County of Cook (for which there shall be a certificate of occupancy), the Illinois Department of Public Health (for which there shall be approval to operate as a 128 bed facility), and from the U.S. Department of Housing and Urban Development ("HUD") which insures the development loan for the Project.

23. Prior Lease. At all times prior to the commencement of the term of this Lease, Lessee shall continue to occupy the Premises and the existing improvements thereon pursuant to the terms of an existing lease (the "Prior Lease") between the parties dated January 1, 1990, and Lessee shall fully and faithfully comply with each and all of the provisions of the Prior Lease, including but not limited to the timely payment of rental as provided therein. Upon the commencement of the term of this Lease, the term of the Prior Lease shall expire, and the Prior Lease is hereby amended accordingly.

24. Commencement and Expiration. The term of this Lease shall commence on the first to occur of (i) occupancy of and commencement of operations in the Project by Lessee or (ii) thirty days after the delivery of the Project to Lessee as provided in section 22 above; and the term of this Lease shall expire on the last day of the 240th full month after the commencement of the term. From and after the commencement of the term of this Lease, Lessor shall have the right to raze the existing improvements on the Premises, as provided in the plans and specifications described above, and all references to the "Premises" thereafter shall constitute a reference to the Project and the land on which the Project is situated, without reference to the improvements which are to be razed.

25. Proration of Initial Rental. If the commencement of the term of this Lease shall occur on a date other than the first day of a month, then the rental shall be prorated daily to the date commencement on the basis of the rental payable under the Prior Lease, and thereafter the rental shall prorated daily to the end of the first month on the basis of the rental payable hereunder.

26. HUD Compliance. Lessee acknowledges that the Project is being financed and to be financed pursuant a loan which is to be insured by HUD, and that the loan is evidenced and secured by and subject to the restrictions of documents provided by HUD for similar projects, as adapted to the Project, including but not limited to a mortgage and regulatory agreement. Lessee agrees to execute and delivery any specialized form of regulatory agreement required for purposes of this Lease. Notwithstanding anything in this Lease to the contrary, this Lease is subject and subordinate to and Lessee shall during the term of this Lease comply with and observe each and all of the conditions, covenants and provisions to be performed or observed on the part of the Lessor or Lessee under the mortgage, HUD regulatory agreement and other such documents, as well as any regulatory agreement executed by Lessee, including but not limited to conditions, covenants and provisions relating to the care, maintenance, repair, insurance, restoration and condemnation of the Premises, notwithstanding that such conditions, covenants and provisions may require a standard of compliance greater than

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that required by the provisions of this Lease or may require payments or performances not otherwise required by this Lease. Lessee shall neither do nor permit anything which will constitute a default under any obligation of the Lessor or Lessee under the mortgage, regulatory agreements or other loan documents, it being the intention hereof that Lessee shall so comply that such loan documents shall at all times be in good standing and not subject to any default on the part of Lessor or Lessee thereunder. In furtherance thereof, (i) this Lease may not be assigned nor may the Premises be sublet without the prior consent of HUD, and (ii) Lessee shall not voluntarily permit any reduction in nursing home bed capacity in the Premises without the prior consent of HUD.

27. Nursing Home. Throughout the term of this Lease, Lessee shall at its sole cost and expense obey, observe and comply with all laws, ordinances, orders, rules, regulations and requirements of each Federal, state and municipal governmental agency or authority having jurisdiction over the Premises and the operation thereof as a nursing home and from time to time in effect, foreseen and unforeseen, ordinary and extraordinary, which may be required to maintain the operation of the Premises as a 128 bed intermediate care nursing home. Upon expiration or termination of this Lease for any reason whatsoever, Lessee will return the Premises to Lessor, qualified and sufficient for continued licensure by the Illinois Department of Public Health as a 128 bed intermediate care nursing home facility.

28. Personal Property. There is included as part of the Premises described hereunder certain existing furniture, fixtures and equipment located on the Premises and used in the management and operation thereof. Lessee shall have the right to use the same during the term of this Lease, and shall at all times have the obligation to maintain all of the foregoing in good order and operating condition, to insure the same for the replacement value thereof and to return the same in the requisite order and condition upon the termination or expiration of the term of the Lease.

29. Absolute Net Lease -- Replacement Reserves. This Lease is and shall be deemed and construed to be a "net net lease" and the rent specified herein shall be net to the Lessor in each year during the term of this Lease, without abatement, deduction or setoff for any reason whatsoever. Lessee shall pay all costs, expenses and obligations of every kind relating to the Premises (other than payment of principal, interest and mortgage insurance premium under the loan documents) which may arise or become due during the term of this Lease by reason of the occupancy and/or operation of the Premises by Lessee, and shall indemnify Lessor against any and all such costs, expenses and obligations. In the event of the nonpayment by the Lessee of any such required payments when due, the Lessor shall have the same rights and remedies as in respect of the monthly rental. Anything herein contained to the contrary notwithstanding, to the extent that Lessor shall have replacement reserve balances held and administered under the documents for the loan described above, such funds shall be used to the extent permitted by HUD for their intended purpose, prior to requiring expenditures by Lessee for such items. Lessor will cooperate with all reasonable requests of Lessee to seek such distributions of reserved funds.

30. Taxes and Assessments. Lessee shall pay to Lessor, as additional rent hereunder, all taxes and assessments, water taxes, and other impositions, ordinary and extraordinary of every kind and nature whatsoever, which may be levied, assessed or imposed upon the Premises or any part thereof or on any of the gross rentals payable hereunder, provided however that taxes for the final year of the term of this Lease (and not the initial term) shall be prorated as of the date of expiration. Either party shall have the right, at the cost of Lessee, to contest the amount or legality of such taxes or assessments and to make application for the reduction thereof and the parties shall cooperate in any such proceedings,

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any resulting benefits to be first applied to the costs of contesting the same and any remainder to be payable to Lessee. No such contest shall delay the obligation of Lessee to timely pay all such taxes, unless the due date for payment is extended because of such application or contest and consent of HUD to such delayed payment is procured.

31. Reserve Accounts. So long as any such reserve account is required to be maintained pursuant to the loan documents for the aforescribed HUD-insured loan, Lessee shall pay to Lessor monthly, concurrently with and on or before the due date of each installment of monthly rent due hereunder, reserve amounts for the following purposes, to be held and administered by the lender of such HUD-insured loan and subject to the disbursement and other restrictions imposed on such accounts by HUD and/or such lender:

A. Taxes. One twelfth of the amount of the annualized taxes payable by Lessee hereunder, as estimated by either Lessor or such greater amount as may be estimated the aforescribed lender.

B. Insurance. One twelfth of the amount of the annual insurance premiums payable by Lessee hereunder, as estimated by either Lessor or such greater amount as may be estimated the aforescribed lender.

If any reserves are insufficient to pay for taxes and insurance required under this Lease, the obligation of tenant shall not be diminished or impaired, and Lessee shall timely and fully pay such items, without reference to any reserve inadequacy. Lessor will cooperate with Lessee from time to time in seeking to procure appropriate disbursements of funds held in such reserve accounts.

32. Casualty Damage. In the event the Premises are damaged or destroyed by fire or other casualty to the extent that fifty percent (50%) or more of the building on the Premises shall be untenable, either Lessor or Lessee may terminate this Lease by notice to the other within sixty (60) days after the date of damage or loss. If this Lease is not so terminated, the Lessor shall commence promptly and proceed diligently to restore the Premises to substantially the same condition that existed prior to such damage or destruction (or if such condition does not meet licensing authority requirements, such alternative condition which conforms with the same) not later than one hundred eighty (180) days after the receipt of the insurance proceeds therefor.

In the event the Premises are so damaged, but only to the extent that fifty percent (50%) or less of the building on the Premises shall be untenable, this Lease shall not be terminated, and the Lessor shall restore the Premises as aforesaid not later than one hundred eighty (180) days after the receipt of the insurance proceeds therefor.

In the event of any damage or destruction referred to in this paragraph 31, if the Lease is not terminated, all rental shall abate from the date of such damage or destruction in proportion to the untenable portion of the building premises. Lessee shall pay to the Lessor any rental not paid by the proceeds of such insurance.

33. Casualty Insurance. Lessee shall procure and maintain insurance in full force and effect during the term hereof on the improvements and on any of Lessor's contents, machinery and equipment on the Premises (including personal property), against loss or damage by fire or other casualty included in endorsements providing what is commonly known as all risk fire and extended coverage insurance, in the amount of the replacement value thereof from time to time (with such additional endorsements as Lessor desires to provide) and with loss of rents coverage in the amount of Lessee's obligations hereunder for one (1) year. Such insurance

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shall be issued by companies and in forms selected by Lessor and shall name Lessor as the party insured, and at Lessor's election any secured party or other person having any interest in the Premises may be named as additional insureds under such endorsements as Lessor may from time to time desire. Lessor shall have no obligation to insure or provide insurance for the Premises, and in the absence of notice to the contrary, Lessee shall procure and deliver evidence of continuous insurance conforming to the requirements hereof.

34. Liability Insurance. Lessee shall at all times during the term hereof procure and maintain in full force and effect insurance for the benefit of Lessor and its beneficiaries and their agents, and Lessee, general comprehensive liability insurance against claims for personal injury, sickness or disease, including death and property damage, on or about the Premises, to the combined limit in respect to each person and to each occurrence causing bodily injury or death, of not less than Three Million Dollars (\$3,000,000), and to the limit of not less than Three Hundred Thousand Dollars (\$300,000) in respect to property damage. Lessee shall cause Lessor to be named as an additional insured in such general comprehensive liability insurance policy and in Lessee's umbrella liability policy, if any. Lessee shall furnish Lessor with memoranda or certificates of such insurance policies. All such insurance shall be procured from a responsible insurance company or companies satisfactory to Lessor and authorized to do business in Illinois. All such certificates shall provide that the coverage provided Lessor may not be cancelled or altered except upon thirty (30) days prior written notice to Lessor.

35. Waiver of Subrogation. Neither Lessor nor Lessee shall be liable to the other for any physical damage to, or loss of rents or profits from the Premises or its contents caused in whole or in part by the negligence of any of them, if the cause of such damage is a fire or other casualty compensable pursuant to the casualty loss or business interruption insurance policies insuring the person suffering such loss. All insurance policies delivered hereunder and otherwise held by Lessee shall be endorsed to permit this waiver of subrogation without affecting the insurer's obligations thereunder.

36. Condemnation. In the event any portion of the Premises is taken or condemned for a public or quasi-public use or purpose by any competent authority, which taking shall render the Premises untenable for Lessee's purposes, or shall constitute a taking of more than twenty percent (20%) of the building floor area of the improvements on the Premises, at Lessor's election the term of this Lease shall terminate as of the date possession is required for such use or purpose. In such event, any award of damage or compensation on account of any such taking or condemnation shall be the sole property of Lessor. If this Lease shall not be so terminated, Lessor shall to the extent practicable restore the Premises at Lessor's expense within one hundred twenty (120) days after receipt of the award, and upon Lessor's failure so to do, Lessee may terminate this Lease. Rental shall abate from date of taking in proportion to floor area taken.

37. Events of Default. Any one or more of the following events shall be events of default, and upon the occurrence of any one of them, Lessor shall be entitled to utilize against Lessee any judicial or non-judicial remedy available to Lessor at law, in equity or provided by the terms of this Lease:

A. A petition in bankruptcy, reorganization, composition, arrangement or for the appointment of a receiver is filed by Lessee under the Federal Bankruptcy laws or any other state or federal bankruptcy or insolvency laws or any laws relating to the relief of debtors, or any such petition is filed against Lessee and is not discharged within sixty (60) days from the date of filing; or

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B. Lessee ceases doing business in the ordinary course;  
or

C. Lessee makes any assignment for the benefit of creditors; or

D. Lessee fails to pay within five (5) days after notice of such monetary default from Lessor to Lessee, any payments required to be made by Lessee hereunder; or

E. Lessee defaults in any of the other covenants and agreements herein contained to be kept, observed and performed by Lessee, and such default continues for thirty (30) days after notice thereto from Lessor to Lessee, unless Lessee commences promptly within said thirty (30) day period to provide compliance, and provided that Lessee proceeds diligently thereafter to provide compliance at the earliest practicable time.

38. Beneficiaries. Any obligation to be performed or right which may be enforced by the Lessor hereunder may be performed or enforced, as the case may be, by the beneficiary of Lessor, and any such act by a beneficiary of Lessor shall be fully effective and enforceable as if the same were the act of Lessor, for purposes of this Lease.

39. Notices. All notices to or demands upon Lessor or Lessee desired or required to be given under any of the provisions hereof shall be in writing. Any notices or demands from either party to the other shall be deemed to have been duly and sufficiently given upon personal delivery thereof, or if a copy thereof has been mailed by United States registered or certified mail in an envelope properly stamped and addressed to the Lessor at the address on the face of this Lease, and to the Lessee at the address of the Premises, or at such other address as a party may theretofore have furnished by written notice to the other. The effective date of a mailed notice shall be two (2) days after delivery of the same to the United States Postal Service.

40. Trustee Exculpation. This Lease is executed by Amalgamated Trust and Savings Bank, not personally but as Trustee aforesaid, in the exercise of the power and authority conferred upon and invested in it as such Trustee and under the express direction of the beneficiaries of a certain Trust Agreement known as Trust No. 3332 at Amalgamated Trust and Savings Bank, to all provisions of which Trust Agreement this Lease is expressly made subject. It is expressly understood and agreed that nothing herein or in said Lease contained shall be construed as creating any liability whatsoever against said Trustee, personally, and in particular without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant either expressed or implied herein contained or to keep, preserve or sequester any property of said Trustee, and that all personal liability of said Trustee of every sort, if any, is hereby expressly waived by said Lessee, and by every person now or hereafter claiming any right or security hereunder; and that so far as the said Trustee is concerned the owner of any indebtedness or liability accruing hereunder shall look solely to the Premises hereby leased for the payment thereof. It is further understood and agreed that the said Trustee has no agent or employees and merely holds naked legal title to the property herein described, and that said Trustee has no control over and under this Lease and personally assumes no responsibility for (1) the management or control of such property, (2) the upkeep, inspection, maintenance or repair of such property, (3) the collection of the rents or the rental of such property or (4) the conduct of any business purpose which is carried on upon the Premises.


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IN WITNESS WHEREOF, the parties have executed this Rider on the day and year first above written on the printed form constituting part of this Lease.

GOLFVIEW DEVELOPMENTAL CENTER,  
INC.

AMALGAMATED TRUST AND SAVINGS  
BANK, as Trustee aforesaid

By:   
Anthony R. Miner, President

By:   
Its: EDWARD C. SWARTZ, Vice President

Property of Cook County Clerk's Office

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ATTACH RIDERS HERE

EXONERATION PROVISION RESTRICTING  
ANY LIABILITY OF AMALGAMATED BANK OF  
CHICAGO ATTACHED TO THIS HEREOF.  
EXPRESSLY MADE A PART

This document is executed by Amalgamated Trust and Savings Bank, a corporation of Illinois, as Trustee under Trust Agreement dated September 15, 1977, and known as Trust No. 3332, as aforesaid, in the exercise of the power and authority conferred upon and vested in said Trustee as such, and it is expressly understood and agreed that nothing contained in said instrument shall be construed as creating any monetary liability on said Trustee personally to pay any indebtedness accruing thereunder, or any personal liability on said Trustee with respect to the performance of any warranty or covenant, either expressed or implied in said instrument (all such personal monetary liability, if any, being expressly waived by the parties hereto and by every person now or hereafter claiming any right of security thereunder) except that the said Trustee shall be liable for funds or property of the project coming into its hands which, by the provisions of the Regulatory Agreement, it is not entitled to retain.

If this instrument is executed by a corporation, such execution has been authorized by a duly adopted resolution of the Board of Directors of such corporation.

This lease consists of 9 pages numbered 1 to 9, including a rider consisting of 6 pages identified by Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the Date of Lease stated above.

LESSEE:

LESSOR:

GOLFVIEW DEVELOPMENTAL CENTER, INC. (SEAL)

AMALGAMATED TRUST AND SAVINGS BANK, (SEAL)  
as Trustee aforesaid

By: Anthony R. Miner (SEAL)  
Anthony R. Miner, President

By: Edward C. Sweigard (SEAL)  
EDWARD C. SWEIGARD, Vice President

### ASSIGNMENT BY LESSOR

On this \_\_\_\_\_, 19\_\_\_\_ for value received, Lessor hereby transfers, assigns and sets over to \_\_\_\_\_ all right, title and interest in and to the above Lease and the rent thereby reserved, except rent due and payable prior to \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(SEAL)  
\_\_\_\_\_  
(SEAL)

### GUARANTEE

On this \_\_\_\_\_, 19\_\_\_\_ in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Guarantor hereby guarantees the payment of rent and performance by Lessee, Lessee's heirs, executors, administrators, successors or assigns of all covenants and agreements of the Lease.

\_\_\_\_\_  
(SEAL)  
\_\_\_\_\_  
(SEAL)

Note: Use Form Number 12-1P for assignment by Lessee.