

# UNOFFICIAL COPY



Eugene "Gene" Moore Fee: \$50.00  
Cook County Recorder of Deeds  
Date: 07/17/2003 08:35 AM Pg: 1 of 14

THIS INSTRUMENT WAS PREPARED  
BY, AND UPON RECORDING SHOULD  
BE RETURNED TO:

Margaret Ann Brown, Esq.  
Troutman Sanders LLP  
1660 International Drive  
Suite 600  
McLean, Virginia 22102

## GUARANTY, CROSS-COLLATERALIZATION, CROSS-DEFAULT AND MORTGAGE MODIFICATION AGREEMENT

THIS GUARANTY, CROSS-COLLATERALIZATION, CROSS-DEFAULT AND MORTGAGE MODIFICATION AGREEMENT (this "Agreement") is made as of June 30, 2003, by and among **SUNRISE THIRD SCHAUMBURG SL, LLC** an Illinois limited liability company ("Mortgagor"), whose address is c/o Sunrise Senior Living Investments, Inc., 7902 Westpark Drive, McLean, Virginia 22102; and **SUNRISE SENIOR LIVING INVESTMENTS, INC.**, a Virginia corporation ("Mortgagee"), whose address is 7902 Westpark Drive, McLean, Virginia 22102.

### RECITALS

A. Mortgagor is indebted to Mortgagee pursuant to a loan (the "Loan") in the maximum principal sum of TWELVE MILLION THREE HUNDRED EIGHTY-NINE THOUSAND EIGHTY-SEVEN and No/100 Dollars (\$12,389,087.00), which Loan is evidenced by that certain Promissory Note dated of even date herewith from Mortgagor to Mortgagee in the principal amount of the Loan (as the same may hereafter be renewed, extended, modified, or amended, being hereinafter referred to as the "Note"), which Note is secured by, among other things, that certain Mortgage, Security Agreement and Fixture Filing (the "Mortgage") dated of even date herewith and to be recorded on or about the date hereof, encumbering the real property more particularly described in Exhibit "A" hereto (the "Property"). The Note, the Mortgage, together with any other documents or instruments executed by Mortgagor or others evidencing, securing or related to the Loan are collectively referred to herein as the "Loan Documents".

B. The Mortgagee has also made loans to entities that share common ownership with the Mortgagor as more particularly described in Exhibit "B" attached hereto (such loans together with the Loan, being collectively referred to herein as the "Related Loans") which Related Loans are, or will be, evidenced by the promissory notes, deeds of trust or mortgages, loan agreements and other documents more particularly described in Exhibit "C" attached hereto (such documents, together with the Loan Documents, being collectively referred to herein as the "Related Loan Documents"). As a condition to making the Loan, Mortgagee has required that the Related Loans be cross-defaulted and cross-collateralized with one another.

### AGREEMENT

NOW, THEREFORE, for and in consideration of the Loan and the Related Loans, and to secure the prompt payment thereof, Mortgagor does hereby irrevocably grant, assign, mortgage, remise, release, warrant, convey and set over to Mortgagee, its successors and assigns, forever

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and grants to Mortgagee, a security interest in and to the Mortgaged Property (as defined in the Mortgage).

TO SECURE unto Mortgagee the repayment of the Loan and the Related Loans, at and in the manner stipulated herein, in the Note, in the other Loan Documents, and in the Related Loan Documents, and the performance of the covenants and agreements of Mortgagor contained in the Loan Documents and the Related Loan Documents, subject however to the terms and conditions herein:

PROVIDED, HOWEVER, that, notwithstanding anything to the contrary set forth in this Agreement or any of the Loan Documents, if Mortgagor shall pay to Mortgagee the amount of the aggregate of the principal of and interest on the Loan due and owing from time to time and all expenses, charges and other amounts due and owing from time to time, as described in the Note and the other Loan Documents, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall cause all other obligated parties to keep, perform, and observe all and singular the covenants and promises herein, in the Note and in each of the other Loan Documents to be kept, performed, and observed, all without fraud or delay, and there is at such time no Event of Default under the Related Loan Documents, then this Agreement, and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, terminate, and be void.

FOR VALUABLE CONSIDERATION, Mortgagor and Mortgagee agree as follows:

1. Guaranty.

(a) The Mortgagor hereby unconditionally and irrevocably, guarantees to the Lender (i) the due and punctual payment in full (and not merely the collectibility) of loans from Lender (the "Related Loans") that are primarily secured by the Related Properties (as defined in the Loan Agreement) and all obligations related thereto, in each case when due and payable, all according to the terms of the documents evidencing and security the Related Loans (the "Related Loan Documents"); and (ii) the due and punctual performance by other Persons (the "Related Parties") of all of the other terms, covenants and conditions contained in the Related Loan Documents.

(b) The obligations and liabilities of Mortgagor as a guarantor under this Section 1 shall be absolute and unconditional, joint and several with any other guarantor of the Related Loans, irrespective of the genuineness, validity, priority, regularity or enforceability of this Agreement, any of the Loan Documents or any of the Related Loan Documents or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor. Mortgagor in its capacity as a guarantor expressly agrees that the Lender may, in its sole and absolute discretion, without notice to or further assent of Mortgagor and without in any way releasing, affecting or in any way impairing the joint and several obligations and liabilities of Mortgagor as a guarantor hereunder:

- (i) waive compliance with, or any defaults under, or grant any other indulgences under or with respect to any of the Related Loan Documents;
- (ii) modify, amend, change or terminate any provisions of any of the Related Loan Documents;
- (iii) grant extensions or renewals of or with respect to the Related Loans or any of the Related Loan Documents;

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(iv) effect any release, subordination, compromise or settlement in connection with this Agreement or any of the Related Loan Documents;

(v) agree to the substitution, exchange, release or other disposition of any collateral securing the Related Loans, or any of them or to the subordination of any lien or security interest therein;

(vi) make advances for the purpose of performing any term, provision or covenant contained in this Agreement or any of the Related Loan Documents with respect to which the Mortgagor shall then be in default;

(vii) make future advances pursuant to any of the Related Loan Documents;

(viii) assign, pledge, hypothecate or otherwise transfer the Related Loans or any of the Related Loan Documents or any interest therein, all as and to the extent permitted by the provisions of the Related Loan Documents;

(ix) deal in all respects with the Related Parties as if this Section 1 were not in effect; and

(x) effect any release, compromise or settlement with any of the Related Parties or any other guarantor.

(c) The obligations and liabilities of Mortgagor, as guarantor under this Section 1 shall be primary, direct and immediate, shall not be subject to any counterclaim, recoupment, set off, reduction or defense based upon any claim that Mortgagor may have against any one or more of the Related Parties, the Lender and/or any other guarantor and shall not be conditional or contingent upon pursuit or enforcement by the Lender of any remedies it may have against Related Parties with respect to any of the Related Loan Documents, whether pursuant to the terms thereof or by operation of law. Without limiting the generality of the foregoing, the Lender shall not be required to make any demand upon any of the Related Parties, or to sell any collateral securing any of the Related Loans or otherwise pursue, enforce or exhaust its remedies against Related Parties or the Collateral either before, concurrently with or after pursuing or enforcing its rights and remedies hereunder. Any one or more successive or concurrent actions or proceedings may be brought against Related Parties under this Section 1, either in the same action, if any, brought against any one or more of the Related Parties or in separate actions or proceedings, as often as the Lender may deem expedient or advisable. Without limiting the foregoing, it is specifically understood that any modification, limitation or discharge of any of the liabilities or obligations of any one or more of the Related Parties, any other guarantor or any obligor under any of the Related Loan Documents, arising out of, or by virtue of, any bankruptcy, arrangement, reorganization or similar proceeding for relief of debtors under federal or state law initiated by or against any one or more of the Related Parties, or under any of the Related Loan Documents shall not modify, limit, lessen, reduce, impair, discharge, or otherwise affect the liability of Mortgagor under this Section 1 in any manner whatsoever, and this Section 1 shall remain and continue in full force and effect. It is the intent and purpose of this Section 1 that Mortgagor shall and does hereby waive all rights and benefits which might accrue to any other guarantor by reason of any such proceeding, and Mortgagor agrees that it shall be liable for the full amount of the obligations and liabilities under this Section 1 regardless of, and irrespective to, any modification, limitation or discharge of the liability of any one or

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more of the Related Parties, any other guarantor or any obligor under any of the Related Loan Documents, that may result from any such proceedings.

(d) Mortgagor, as guarantor under this Section 1, hereby unconditionally, irrevocably and expressly waives:

(i) presentment and demand for payment of the obligations evidenced and secured by the Related Loan Documents and protest of non-payment;

(ii) notice of acceptance of this Section 1 and of presentment, demand and protest thereof;

(iii) notice of any default hereunder or under any of the Related Loan Documents and notice of all indulgences;

(iv) notice of any increase in the amount of any portion of or all of the indebtedness guaranteed by this Section 1;

(v) demand for observance, performance or enforcement of any of the terms or provisions of this Section 1 or any of the Related Loan Documents;

(vi) all errors and omissions in connection with the Lender's administration of all indebtedness guaranteed by this Section 1;

(vii) any right or claim of right to cause a marshalling of the assets of any of the Related Parties;

(viii) any act or omission of the Lender which changes the scope of the risk as guarantor hereunder; and

(ix) all other notices and demands otherwise required by law which such Mortgagor may lawfully waive.

(e) Within ten (10) days following any written request of Lender so to do, Mortgagor will furnish the Lender and such other persons as the Lender may direct with a written certificate, duly acknowledged stating in detail whether or not any credits, offsets or defenses exist with respect to this Section 1.

## 2. Cross-collateralization.

The Related Loans are hereby cross-collateralized with one another and the Mortgagor agrees that the Mortgaged Property described in the Loan Documents shall secure, in addition to the Loan and on a *pari passu* basis with all other Related Loans, the obligations of the Mortgagor under the mortgages or deeds of trust and security agreements constituting part of the Related Loan Documents, including, without limitation, the obligations of the Mortgagor to pay the principal and interest on all other Related Loans, as the same may hereafter be renewed, modified, amended or extended, and to pay all other indebtedness and other agreed charges and to perform all of the terms and conditions under all other Related Loan Documents.

## 3. Cross-default.

The Related Loans are hereby cross-defaulted with one another and the Mortgagor agrees that the occurrence of an Event of Default as defined in, and pursuant to any of the Related Loan

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Documents, which is not cured within applicable grace or curative periods set forth therein, shall constitute an immediate Event of Default (without need of notice or the expiration of any additional cure period other than as specified in such Loan Document) under all other Related Loan Documents.

#### 4. Mortgage Modification.

The Mortgage is hereby amended as follows:

(a) to increase the amount of the Indebtedness (as defined in the Mortgage), secured by the Mortgage to include the principal of and interest on each of the promissory notes listed in Exhibit C hereto and all expenses, charges and other amounts due and owing from time to time under any and all of the Related Loan Documents; and

(b) to provide that the Indebtedness is secured by the Mortgaged Property (as defined in the Mortgage) and the "Mortgaged Property" defined and described in the mortgages or deeds of trust and security agreements listed on Exhibit C attached hereto.

#### 5. Miscellaneous.

(a) Upon the filing of the deeds of trust or mortgages constituting part of the Related Loan Documents, all necessary recording, intangible, or documentary stamp taxes will be duly paid by the Mortgagor. This Agreement is being given as additional collateral to secure the obligations of the Mortgagor under the Related Loan Documents.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

#### 6. No Oral Agreements.

The Related Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

#### 7. Controlling Law.

The parties hereto agree that the validity, interpretation, enforcement and effect of this Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, provided, that the parties agree that the provisions for the creation, perfection, enforcement and foreclosure of the liens on and security interests in or assignments of any of the Mortgaged Property created pursuant to the Mortgage or this Agreement shall be governed by the laws of the state in which such Mortgaged Property is located.

#### 8. WAIVER OF JURY TRIAL.

**MORTGAGOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATED LOANS, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF MORTGAGEE AND/OR MORTGAGOR WITH RESPECT TO THE RELATED LOAN DOCUMENTS OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF**

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THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. MORTGAGOR AGREES THAT MORTGAGEE MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF MORTGAGOR IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY AS AN INDUCEMENT OF MORTGAGEE TO MAKE THE RELATED LOANS TO MORTGAGOR, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN MORTGAGOR AND MORTGAGEE SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

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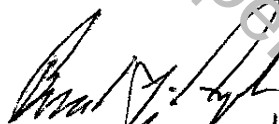
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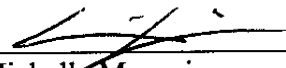
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed as of the date set forth above.

MORTGAGOR:

WITNESS:

**SUNRISE THIRD SCHAUMBURG SL, LLC**  
an Illinois limited liability company  
By: AL Funding III, Inc., a Delaware corporation, its managing member

  
Name: Vincent J. Ayala

By:  (Seal)  
Michelle Moezzi  
Vice President

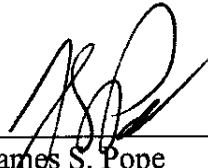
Property of Cook County Clerk's Office

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MORTGAGEE:

WITNESS:

  
Name: Frank S. ...

By:  (Seal)  
James S. Pope  
Vice President

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## ACKNOWLEDGMENT

STATE OF New York )  
 )  
COUNTY New York )

Before me, Michelle Moezzi, on this day personally appeared Michelle Moezzi, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the Vice President of AL Funding III, Inc., a Delaware corporation and managing member of the Mortgagor, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation and said limited liability company.

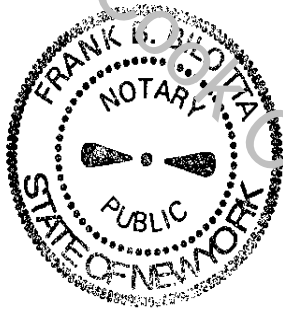
Given under my hand and seal of office this as of June 24, 2003.



Notary Public

(SEAL)

My Commission Expires:



FRANK B. BILOTTA  
NOTARY PUBLIC, State of New York  
No. 02BI5074374  
Qualified in New York County  
Commission Expires March 10, 2007

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## ACKNOWLEDGMENT

The foregoing Assignment was acknowledged before me on June 24, 2003, by James S. Pope, as Vice President of SUNRISE SENIOR LIVING INVESTMENTS, INC., a Virginia corporation.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public

[SEAL]

My commission expires July 31, 2005.

Property of Cook County Clerk's Office

**UNOFFICIAL COPY****EXHIBIT A****LEGAL DESCRIPTION:**

LOT 2 (EXCEPT THOSE PARTS DESCRIBED AS FOLLOWS): THE EAST 25.25 FEET CONDEMNED IN CASE 82L7832, ALSO,

THAT PART COMMENCING AT THE NORTHEAST CORNER OF LOT 1 IN WINKELHAKES'S SUBDIVISION, THENCE ON AN ASSUMED BEARING OF NORTH 87 DEGREES, 32 MINUTES, 18 SECONDS WEST ALONG THE NORTH LINE OF LOT 1, 25.27 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 87 DEGREES, 32 MINUTES, 18 SECONDS WEST, 37.02 FEET; THENCE NORTH 0 DEGREES, 27 MINUTES, 35 SECONDS EAST, 31.07 FEET; THENCE SOUTH 89 DEGREES, 32 MINUTES, 25 SECONDS EAST, 15.00 FEET; THENCE NORTH 5 DEGREES, 25 MINUTES, 57 SECONDS EAST, 245.59 FEET TO THE NORTH LINE OF LOT 2; THENCE SOUTH 0 DEGREES, 27 MINUTES, 35 SECONDS WEST, 276.96 FEET TO THE POINT OF BEGINNING, AS CONVEYED IN DEED RECORDED JUNE 4, 1993 AS DOCUMENT 93422300,

ALSO,

THAT PART BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2; THENCE NORTH 3 DEGREES 55 MINUTES 21 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 2, A DISTANCE OF 171.50 FEET; THENCE SOUTH 84 DEGREES 16 MINUTES 55 SECONDS EAST, A DISTANCE OF 310.90 FEET; THENCE SOUTH 14 DEGREES 43 MINUTES 47 SECONDS WEST, A DISTANCE OF 216.14 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 1, WHICH POINT IS 182.00 FEET (ARC DISTANCE) WESTERLY FROM THE SOUTHEAST CORNER OF SAID LOT 1, AS SAME IS LOCATED ON NORTH LINE OF HIGGINS ROAD; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 1 AND 2 AND THE NORTHERLY LINE OF HIGGINS ROAD, AS DEDICATED PER DOCUMENT NUMBER 12647604, AN ARC DISTANCE OF 274.91 FEET, MORE OR LESS TO THE POINT OF BEGINNING, AS CONVEYED IN DEED RECORDED JULY 31, 1984 AS DOCUMENT 27193333

ALL IN WINKELHAKES'S SUBDIVISION BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED MARCH 14, 1969 AS DOCUMENT 20781871 IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LICENSE FOR THE BENEFIT OF PARCEL 1 TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, RENOVATE, REHABILITATE AND REPLACE A SEWER LINE AS SET FORTH IN LICENSE AGREEMENT BY AND BETWEEN WEATHERSFIELD NORTH CONDOMINIUM ASSOCIATION, AN ILLINOIS NOT-FOR-PROFIT CORPORATION (LICENSOR) AND AL V ASSISTED LIVING, L.L.C., AN ILLINOIS LIMITED LIABILITY COMPANY (LICENSEE), DATED JUNE 13, 2001 AND RECORDED OCTOBER 5, 2001 AS DOCUMENT 0010929730.

TAX NO.: 07-14-302-019 VOL. NO.: 187

790 NORTH PLUM GROVE ROAD  
SCHAUMBURG, IL.

First American Title  
Order # \_\_\_\_\_

**UNOFFICIAL COPY**EXHIBIT BRELATED LOANS

	<u>Date</u>	<u>Borrower</u>	<u>Loan Amount</u>
1.	June 30, 2003	Sunrise Third Lincroft SL, LLC	\$7,623,361
2.	June 30, 2003	Sunrise North Naperville Assisted Living, L.L.C.	\$14,846,400
3.	June 30, 2003	Sunrise Third Plainview SL, LLC	\$9,864,000
4.	June 30, 2003	Sunrise Third Roseville SL, LLC	\$11,950,618
5.	June 30, 2003	White Oak Assisted Living, LLC	\$8,075,635
6.	June 30, 2003	Canoga Park Assisted Living, L.L.C.	\$10,922,166

**UNOFFICIAL COPY**EXHIBIT CRELATED LOAN DOCUMENTS

<u>Borrower</u>	<u>Loan Amount</u>	<u>Loan Documents</u>
Sunrise Third Lincroft SL, LLC	\$7,623,361	<ol style="list-style-type: none"> <li>1. Promissory Note dated June 30, 2003</li> <li>2. Mortgage, Security Agreement and Fixture Filing dated June 30, 2003</li> <li>3. Assignment of Master Lease and Guaranty dated June 30, 2003</li> <li>4. All other instruments, agreements or documents executed and delivered by the Borrower, any Guarantor and/or any other Person, singly or jointly with another Person or Persons, evidencing, securing, guarantying or in connection with the Loan</li> </ol>
Sunrise North Naperville Assisted Living, L.L.C.	\$14,846,400	<ol style="list-style-type: none"> <li>1. Promissory Note dated June 30, 2003</li> <li>2. Mortgage, Security Agreement and Fixture Filing dated June 30, 2003</li> <li>3. Assignment of Master Lease and Guaranty dated June 30, 2003</li> <li>4. All other instruments, agreements or documents executed and delivered by the Borrower, any Guarantor and/or any other Person, singly or jointly with another Person or Persons, evidencing, securing, guarantying or in connection with the Loan</li> </ol>
Sunrise Third Plainview SL, LLC	\$9,864,000	<ol style="list-style-type: none"> <li>1. Promissory Note dated June 30, 2003</li> <li>2. Amended and Restated Mortgage, Security Agreement and Fixture Filing dated June 30, 2003</li> <li>3. Assignment of Master Lease and Guaranty dated June 30, 2003</li> <li>4. All other instruments, agreements or documents executed and delivered by the Borrower, any Guarantor and/or any other Person, singly or jointly with another Person or Persons, evidencing, securing, guarantying or</li> </ol>

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<u>Borrower</u>	<u>Loan Amount</u>	<u>Loan Documents</u>
		in connection with the Loan
Sunrise Third Roseville SL, LLC	\$11,950,618	<ol style="list-style-type: none"> <li>1. Promissory Note dated June 30, 2003</li> <li>2. Mortgage, Security Agreement and Fixture Filing dated June 30, 2003</li> <li>3. Assignment of Master Lease and Guaranty dated June 30, 2003</li> <li>4. All other instruments, agreements or documents executed and delivered by the Borrower, any Guarantor and/or any other Person, singly or jointly with another Person or Persons, evidencing, securing, guarantying or in connection with the Loan</li> </ol>
White Oak Assisted Living, LLC	\$8,075,635	<ol style="list-style-type: none"> <li>1. Promissory Note dated June 30, 2003</li> <li>2. Deed of Trust, Security Agreement and Fixture Filing dated June 30, 2003</li> <li>3. Assignment of Master Lease and Guaranty dated June 30, 2003</li> <li>4. All other instruments, agreements or documents executed and delivered by the Borrower, any Guarantor and/or any other Person, singly or jointly with another Person or Persons, evidencing, securing, guarantying or in connection with the Loan</li> </ol>
Canoga Park Assisted Living, L.L.C.	\$10,992,166	<ol style="list-style-type: none"> <li>1. Promissory Note dated June 30, 2003</li> <li>2. Deed of Trust, Security Agreement and Fixture Filing dated June 30, 2003</li> <li>3. Assignment of Master Lease and Guaranty dated June 30, 2003</li> <li>4. All other instruments, agreements or documents executed and delivered by the Borrower, any Guarantor and/or any other Person, singly or jointly with another Person or Persons, evidencing, securing, guarantying or in connection with the Loan</li> </ol>