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9/8/0142 27 001 Page 1 of 9  
1999-12-17 11:11:39  
Cook County Recorder 37.00



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

Fagel & Haber  
140 S. Dearborn Street  
Suite 1400  
Chicago, Illinois 60603  
Attention: Victor A. Des Laurier, Esq.

P.I.N.(s): 04-27-301-014, 04-27-400-030,  
04-34-200-009, 04-34-200-010,  
04-34-200-011, 04-34-200-013, and  
04-34-201-023

1768772 D2 MS

ASSIGNMENT OF RENTS AND LESSOR'S INTEREST IN LEASES

9  
Bank

This Assignment of Rents and Lessor's Interest in Leases (this "Assignment") is executed and delivered this 10<sup>th</sup> day of December, 1999, by CC-Lake, Inc., a Delaware corporation ("Borrower"), to LaSalle Bank National Association, a national banking association (the "Bank").

I. BACKGROUND

A. Contemporaneously herewith, Borrower has requested that the Bank provide certain extensions of credit, loans and other financial accommodations to Borrower (collectively the "Financial Accommodations") pursuant to (1) that certain Mortgage and Security Agreement of even date herewith executed and delivered by Borrower to the Bank (as amended, renewed, restated or replaced from time to time, collectively the "Mortgage"), (2) that certain Secured Term Note of even date herewith in the principal amount of Ten Million and no/100 Dollars (\$10,000,000.00) executed and delivered by Borrower to the Bank (as amended, renewed, restated or replaced from time to time, collectively the "Note"), and (3) all other agreements, documents or instruments executed and delivered by Borrower to the Bank in connection with or pursuant to the Mortgage and the Note (collectively the "Other Agreements"; the Other Agreements, together with this Assignment, the Mortgage, the Note and any amendments, substitutions, renewals or replacements thereof are collectively the "Loan Documents").

B. The Bank is willing to provide Borrower the Financial Accommodations provided, among other things, Borrower executes and delivers this Assignment to the Bank.

C. In consideration of the foregoing, the mutual promises and understandings of the parties hereto set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower hereby covenants unto and agrees with the Bank as set forth in this Assignment.

II. ASSIGNMENT

A. To secure the full and timely payment and performance by Borrower of the "Liabilities" and the "Obligations" (both as defined in the Mortgage), including, without limitation, the Liabilities evidenced by the Note, Borrower hereby grants, conveys, transfers and assigns to the Bank:

**BOX 333-CT1**

1. all leases, tenancies and leasing all or any part of the premises legally described on Exhibit "A" attached hereto (the "Premises"), any contract for the sale of all or any part of the Premises, or any other agreement for the use, sale or occupancy of all or any part of the Premises, whether heretofore, now or hereafter executed by Borrower and any renewals, extensions, modifications, amendments or substitutions thereto (collectively the "Leases"); and

2. all rents, issues, deposits, income and profits now due or which may hereafter become due under or by virtue of the Leases, or any letting or demise of, or any agreement for the use, sale or occupancy of the Premises or any part thereof and all the avails thereof, now existing or hereafter made or agreed to or which may be made or agreed to under the powers herein granted, together with all rights against guarantors, if any, of the obligations of the lessees under the Leases (collectively the "Income").

The Bank acknowledges that Borrower intends to develop, operate, manage and market the Mortgaged Property as a continuing care retirement community (a "CCRC"). In that regard, Borrower may from time to time enter into various agreements, such as reservation or deposit agreements and continuing care life contracts ("CCRC Agreements") with persons who are or may become residents of the CCRC ("CCRC Residents"). Accordingly, and notwithstanding any provision of this Mortgage or any of the Other Agreements to the contrary (i) Borrower may enter into CCRC Agreements, (ii) Borrower may accept deposits, entrance fees and other payments under CCRC Agreements ("Buyer Deposits"), (iii) no Buyer Deposits shall be deemed to be or constitute part of the Mortgaged Property, and (iv) Borrower shall be entitled to distribute refunds of Buyer Deposits to CCRC Residents, both before and after the occurrence of an Event of Default (hereinafter defined), if and to the extent such refunds are required by the CCRC Agreements.

B. If an Event of Default occurs, Borrower hereby irrevocably appoints the Bank as its true and lawful attorney-in-fact to:

1. rent, lease, let or sell all or any part of the Premises to any party or parties at such price and upon such terms as the Bank may determine; and

2. collect, sue for, settle and compromise all of the rents, issues, deposits, contracts for sale, income and profits now due or which may at any time hereafter become due, with the same rights and powers and subject to the same immunities, exonerations of liability, rights of recourse and indemnity as the Bank would have upon taking possession of the Premises pursuant to the provisions hereinafter set forth.

**III. REPRESENTATIONS, WARRANTIES AND COVENANTS**

Borrower represents, warrants and covenants unto the Bank as follows:

A. The Leases and the Income are freely assignable by Borrower to the Bank, and Borrower has full power and authority to make the assignment provided for herein;

B. None of the Income for any part of the Premises has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Borrower;

C. There are currently no existing Leases;

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D. Borrower has not and will not at any time hereafter, assign or pledge to any person or entity, other than the Bank, any or all of the Leases or the Income;

E. Borrower will promptly provide the Bank with copies of any notices of default sent or received by Borrower in connection with the Leases; and

F. Borrower shall:

1. observe and perform all the obligations imposed upon Borrower, as lessor, under the Leases and not do or permit to be done anything to impair the security thereof;
2. not consent to the assignment or subletting of the Premises without the prior written consent of the Bank;
3. not collect any of the Income in advance of the time when the same shall become due;
4. not alter, modify or change the terms of the Leases or any guarantees thereof, cancel or terminate the Leases or any guarantees thereof or accept a surrender thereof without the prior written consent of the Bank; and
5. deliver to the Bank all original Leases, including, but not limited to, all original Leases executed after the date hereof.

#### IV. WAIVERS

A. Borrower hereby waives any right of set-off against any person in possession of all or any part of the Premises. Nothing herein contained shall be construed as constituting the Bank a "trustee in possession" or a "mortgagee in possession" in the absence of the taking of actual physical possession of the Premises by the Bank pursuant to the provisions hereinafter contained.

B. Borrower hereby waives any claim, cause of action or right of setoff against the Bank, its officers, directors, employees and agents for any loss sustained by Borrower resulting from the Bank's failure to let the Premises after an Event of Default or from any other act or omission of the Bank in managing the Premises, except to the extent of the Bank's gross negligence in connection with such loss, nor shall the Bank be obligated to perform or discharge, nor does the Bank hereby undertake to perform or discharge, any obligation, duty, or liability under the Leases created or incurred by Borrower prior to the time the Bank takes possession of the Premises (the "Pre-existing Obligations"). Borrower shall, and does hereby agree to indemnify the Bank for, and to hold the Bank harmless from, any and all liability, loss, or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against the Bank by reason of any alleged obligations or undertakings on the Bank's part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases, including, but not limited to, any Pre-existing Obligations, except to the extent of the Bank's gross negligence in connection with such liability, loss or damage. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises upon the Bank, nor for the carrying out of any of the terms and conditions of the Leases prior to the time the Bank may take possession, nor shall it operate to make the Bank responsible or liable for any waste committed on the Premises by any lessee or any other persons or entities or for any dangerous or defective conditions of the Premises.

C. If the Bank incurs any liability for any Pre-existing Obligations under the Leases or under or by reason of this Assignment or in the good faith defense of any claims or demands relative to any Pre-existing Obligations, the amount thereof, including, but not limited to, costs, expenses, and attorneys' fees, shall be secured hereby and by the Loan Documents, and shall be due and payable from Borrower to the Bank on demand with interest thereon at the "Default Rate" set forth and defined in the Mortgage.

**V. FUTURE LEASES**

A. Borrower shall cause each lessee, whether now existing or hereafter arising, to execute and deliver to the Bank a Tenant Estoppel Certificate and Subordination Agreement, in form and substance acceptable to the Bank.

B. Borrower shall assign and transfer to the Bank all future Leases upon all or any part of the Premises and shall execute and deliver, immediately upon the request of the Bank, all such further assurances and assignments in the Premises as the Bank shall from time to time require.

**VI. EVENT OF DEFAULT**

An "Event of Default" means the occurrence of (a) a breach, default or event of default under this Assignment, or (b) an "Event of Default" as set forth in Section 6.1 of the Mortgage.

**VII. ENFORCEMENT OF THIS ASSIGNMENT**

A. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that the Bank shall not exercise any of the rights and powers conferred upon it under Section II hereunder until the occurrence of an Event of Default.

B. The Bank, without in any way waiving an Event of Default, and without the institution of legal proceedings of any kind whatsoever, may, at its option, either in person, by agent or by a receiver appointed by a court, take possession of the Premises and have, hold, manage, lease, sell and operate the same on such terms and for such period of time as the Bank may deem proper and either with or without taking possession of the Premises in its own name, sue for or otherwise collect and receive the Income and enforce the Leases, including, but not limited to, Income past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof and to apply such Income as the Bank may determine in its sole discretion; including, but not limited to, the payment of:

1. all expenses of managing the Premises, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents, any other liens and premiums for all insurance which the Bank may deem necessary or desirable, and the costs of all alterations, renovations, repairs, or replacements, and all expenses incident to taking and retaining possession of the Premises;

2. the principal sum, interest and any other indebtedness owed to the Bank by Borrower, together with all costs and attorneys' fees in such order of priority as to any of the items mentioned in this paragraph as the Bank, in its sole discretion, may determine, any statute, law, custom or use to the contrary notwithstanding;

3. taxes and special assessments now due or which may hereafter become due on the Premises; and

4. all repairs, decorating, renewals, replacements, alterations, additions, betterments or improvements of the Premises, and of placing the Premises in such condition as will, in the judgment of the Bank, make it readily rentable or saleable.

C. The exercise by the Bank of its rights provided herein and the collection of the Income and the application thereof as herein provided shall not be considered a waiver of any breach, default or Event of Default by Borrower under the Loan Documents.

D. Borrower agrees that the Bank shall have full power to use such measures, legal or equitable, in its sole discretion or in the discretion of its successors, divisions, parents, affiliates, parents or assigns, as may be deemed proper or necessary to enforce the payment of the Income in connection with the Premises, including, but not limited to, actions for the recovery of rent, actions in forcible detainer and actions in distress of rent. This Assignment is and shall be primary and on a parity with the real estate conveyed by the Mortgage and not secondary. Borrower hereby grants to the Bank full power and authority to exercise each and every of the rights, privileges, and powers herein granted at any and all times hereafter, without notice to Borrower, and with full power, to the extent permitted by law, to cancel or terminate any of the Leases for any cause or on any ground, to elect to disaffirm any of the hereafter executed Leases or the Leases subordinated to the lien of the Mortgage, to make all the necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises, to insure and reinsure the same for all risks incidental to the Bank's possession, operation and management thereof, and to receive all Income.

E. Borrower agrees that the Bank may take or release other security for the payment of the Liabilities, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such Liabilities without prejudice to any of its rights under this Assignment.

F. Upon issuance of a deed or deeds pursuant to foreclosure of the Mortgage, the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Borrower. Borrower hereby irrevocably appoints the Bank to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose.

G. Any amounts received by Borrower or their agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification or amendment of any of the Leases and any amounts received by Borrower as Income shall be held in trust by Borrower and immediately remitted to the Bank. Any person acquiring or receiving all or any part of such funds shall acquire or receive the same in trust for the Bank as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith.

#### **VIII. DIRECTION TO LESSEES**

Borrower hereby authorizes and directs any and all lessees or occupants of the Premises to pay over to the Bank all Income after the occurrence of an Event of Default and to continue to do so until otherwise notified by the Bank.

#### **IX. OTHER**

A. This Assignment shall be binding upon Borrower and its successors, and permitted assigns, if any, and any party or parties holding title to the Premises by, through, or under Borrower. All of the rights,



powers, privileges, and immunities herein granted and assigned to the Bank shall also inure to its successors, divisions, nominees, parents, subsidiaries, affiliates and assigns.

B. It is expressly understood that no judgment which may be entered on any debt secured or intended to be secured by the Mortgage shall operate to abrogate or lessen the effect of this instrument, but that the same shall continue in full force and effect until the payment and discharge of any and all indebtedness, obligations, costs, fees and expenses of Borrower and delivered to the Bank. This Assignment shall also remain in full force and effect during the pendency of any foreclosure proceedings, both before and after sale.

C. The relationship between Borrower and the Bank is solely that of secured creditor and debtor, and nothing contained herein or in any of the Loan Documents shall in any manner be construed as making the parties hereto partners, joint venturers or any other relationship other than secured creditor and debtor.

D. If any provision of this Assignment is held to be invalid or unenforceable by a Court of competent jurisdiction, such provision shall be severed herefrom and such invalidity or unenforceability shall not affect any other provision of this Assignment, the balance of which shall remain in and have its intended full force and effect. However, if such invalid or unenforceable provision may be modified so as to be valid and enforceable as a matter of law, such provision shall be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.

E. The Exhibit referred to herein is attached hereto, made a part hereof and incorporated herein by this reference thereto.


F. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original.

G. BORROWER AND THE BANK EACH HEREBY ABSOLUTELY AND UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER OR RELATED TO THIS ASSIGNMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED AND DELIVERED BY BORROWER TO THE BANK.

# UNOFFICIAL COPY

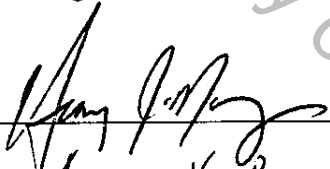
IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first written above.

CC-LAKE, INC.,  
a Delaware corporation

By:   
Its: EVP

Accepted this 13<sup>th</sup> day of  
December, 1999.

LASALLE BANK NATIONAL ASSOCIATION,  
a national banking association

By:   
Its: ASSISTANT VICE PRESIDENT

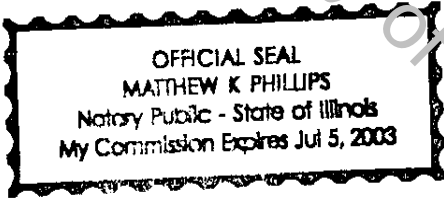
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STATE OF ILLINOIS    )  
                                  ) S.S.  
COUNTY OF Cook    )

I, Matthew Phillips, a Notary Public in and for said County, in the State  
aforesaid, do hereby certify that John Kevin Pankha, who is personally known to me to be the  
EVP of CC-Lake, Inc., and the same person whose name is subscribed to the foregoing instrument,  
appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his  
own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10<sup>th</sup> day of December, 1999.



Matthew Phillips  
Notary Public

My commission expires:  
\_\_\_\_\_



# UNOFFICIAL COPY

## EXHIBIT "A"

### LEGAL DESCRIPTION

LOT 35 IN GLENVIEW NAVAL AIR STATION SUBDIVISION NO. 2, BEING A SUBDIVISION IN PART OF SECTIONS 15, 21, 22, 23, 26, 27, 28, AND 34, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN NUMBERS: 04-27-301-014, 04-27-400-030,  
04-34-200-009, 04-34-200-010,  
04-34-200-011, 04-34-200-013, and  
04-34-201-023

Doc ID: 142083-2

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