

# UNOFFICIAL COPY

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Prepared by and after  
Recording Return to:

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## LEASEHOLD MORTGAGE AND SECURITY AGREEMENT

**THIS LEASEHOLD MORTGAGE AND SECURITY AGREEMENT** (this "Leasehold Mortgage") is dated for reference purposes only as of December 21, 1999, by **Brookdale Living Communities of Illinois - Hoffman Estates, LLC**, a Delaware limited liability company ("Mortgagor"), having an address at 77 W. Wacker Drive, Suite 4400, Chicago, IL 60601, to **LaSalle Bank National Association**, a national banking association ("Bank"), having an address at 135 South LaSalle Street, Chicago, Illinois 60603.

### WITNESSETH:

A. DBF Owner II, LLC, an Ohio limited liability company ("Owner") is the fee title owner of the Premises legally described on Exhibit A, attached hereto and made a part hereof (the "Premises").

B. The Premises is subject to the lien of a mortgage and security agreement dated as of November 10, 1995, as amended concurrently herewith, originally recorded as Document Number 95796987 - (the "Fee Mortgage") and an assignment of rents and leases dated as of November 10, 1999, as amended concurrently herewith, originally recorded as Document Number 95796988 (the "Fee Assignment").

C. Owner purchased the Premises subject to the lien of the Fee Mortgage and the Fee Assignment, and assumed certain obligations and liabilities secured by the Fee Mortgage and the Fee Assignment, including, but not limited to the obligations and liabilities under the terms of that certain Reimbursement Agreement dated as of November 10, 1995, as amended concurrently herewith (collectively, the "Reimbursement Agreement").

D. Owner and Mortgagor have entered into a lease dated of even date herewith (said lease, together with all amendments, modifications, supplements, replacements and restatements thereto or thereof is collectively referred to herein as the "Operating Lease"), pursuant to which Mortgagor has leased the Premises.

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E. A memorandum of the Operating Lease has been filed in the records of the Cook County Recorder of Deeds, concurrently herewith.

F. Concurrently herewith, Mortgagor has executed and delivered to Bank a Guaranty of Payment and Performance (the "Guaranty"), pursuant to which Mortgagor guaranteed payment and performance of all obligations and liabilities of Owner under the terms of the Reimbursement Agreement and all other Credit Agreements (as defined in the Reimbursement Agreement). Any capitalized term not expressly defined herein shall have the meaning set forth in the Guaranty, including definitions incorporated therein by reference.

G. Bank has required and Mortgagor has agreed to grant a security interest in all of its right, title and interest in the Premises to secure performance of the Guaranty.

NOW THEREFORE, Mortgagor and Bank do hereby agree as follows:

As used herein:

"**Land**" shall mean the Land located in the State of Illinois and legally described in Exhibit "A" attached hereto and made a part hereof (the "Land");

"**Improvements**" shall mean all improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or hereafter located on, or used or intended to be used in connection with, the Land or the improvements, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest in and to any such personal property or fixtures, together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures;

"**Easements**" shall mean all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity;

"**Fixtures**" shall mean all fixtures and articles of personal property forming a part of or used in connection with the Land or the Improvements;

"**Permitted Exceptions**" those exceptions set forth on Exhibit B, attached hereto; and

"**Premises**" shall mean the Land, the Improvements, the Fixtures and the Easements.

To (i) secure the payment of all sums due under the Reimbursement Agreement, the Guaranty, the Swap Agreement (as defined in the Reimbursement Agreement), this Leasehold Mortgage and all other documents, agreements and instruments evidencing or securing the obligations of Owner and/or Mortgagor in connection with the Guaranty, the Reimbursement Agreement and the Bond Documents (collectively, the "**Credit Agreements**") assumed by Mortgagor or Owner (such sums, collectively, the "**Indebtedness**"); and (ii) secure the performance and observance of all the covenants, agreements and provisions contained in the Reimbursement Agreement, the Guaranty, the Swap Agreement, this Leasehold Mortgage and the other Credit Agreements of Mortgagor or assumed by Owner, as applicable; and (iii) charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor **DOES HEREBY MORTGAGE, GRANT, HYPOTHECATE, REMISE, RELEASE, ALIENATE AND CONVEY WITH MORTGAGE COVENANTS** unto Bank, its successors and assigns forever, the following described property, rights and interests, all of which property, rights and interests are hereby pledged primarily and on a parity with Mortgagor's interest in the Premises and not secondarily, all of the following (collectively, "the **Collateral**"):

All of Mortgagor's leasehold estate, right, title and interest in the Premises and all personal property arising under the Operating Lease (the "**Leasehold Estate**");

All of Mortgagor's rights and remedies under the terms of the Operating Lease;

All of Mortgagor's right, title and interest in the Premises and all personal property of Mortgagor;

All of Mortgagor's right to purchase or acquire the Premises pursuant to the Operating Lease or any other agreement between Mortgagor and Owner ("**Option Rights**").

All of rights of Mortgagor in any goodwill, trademarks, trade names, option rights, purchase contracts, books and records and general intangibles of Mortgagor relating to the Premises, the Improvements, the Operating Lease and all accounts, contract rights, instruments, chattel paper and other rights of Mortgagor for payment of money, for Premises sold or lent, for services rendered, for money lent, or for advances or deposits made, and any other intangible property of Mortgagor related to the Land, the Improvements, the Operating Lease, and all accounts and monies held in possession of Bank for the benefit of Mortgagor (all of the foregoing is herein referred to collectively as the "**Intangibles**");

All right of Mortgagor to rents, issues, profits, royalties, avails, income and other benefits derived or owned by Mortgagor directly or indirectly from the Land, the Improvements, the Subleases (defined below), and all proceeds of sale or other disposition

of the Collateral or any portion thereof (all of the foregoing is herein collectively called the "Rents");

All rights of Mortgagor as lessor under all subleases, leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person agrees to pay money or any consideration for the use, possession or occupancy of, or any estate in, the Land, the Improvements or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof (all of the foregoing is herein referred to collectively as the "Subleases");

All rights and interests of Mortgagor in and to any and all service and other agreements relating to the operation, maintenance, and repair of the Premises or the buildings and improvements thereon ("Service Agreements");

All rights and interests of Mortgagor in and to any plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses, contracts for services, to be rendered to Mortgagor, or otherwise in connection with the Premises and all other property, contracts, reports, proposals, and other materials now or hereafter existing in any way relating to the Premises or the Collateral or construction of additional improvements thereto (the "Plans");

All rights and interests of Mortgagor in and to unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Mortgagor and all proceeds of the conversion, voluntary or involuntary, of the Collateral or any part hereof into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and all awards and compensation hereafter made to the present and all subsequent owners of the Collateral by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Collateral or any easement therein, including awards for any change of grade of streets;

All rights and interests of Mortgagor in and to judgments, awards of damages and settlements which may result from any damage to the Premises or any part thereof or to any rights appurtenant thereto; all rights of Mortgagor to compensation, awards, damages, claims, rights of action and proceeds of, or on account of (i) any damage or taking, pursuant to the power of eminent domain, of the Premises or any part hereof, (ii) any damage to the Premises by reason of the taking, pursuant to the power of eminent domain, of other property or of a portion of the Premises, or (iii) the alternation of the grade of any street or highway on or about the Premises or any part thereof; all rights of Mortgagor in and to any proceeds of any sales or other dispositions of the Premises or any part thereof;

All rights and interests of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Premises, hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed by Mortgagor on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction,

assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Leasehold Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described herein.

All rights of Mortgagor in and to any proceeds of the foregoing, including, without limitation, all judgments, awards, damages and settlements hereafter made resulting from condemnation or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof, together with the right, title and interest of Mortgagor whatsoever to receive the foregoing,

All, whether now owned or hereafter acquired or arising. If at anytime Mortgagor shall be deemed to be or shall hereafter become the fee title holder of the Premises, then notwithstanding anything to the contrary contained or implied herein (including without limitation the denomination of this instrument as a "**Leasehold Mortgage**"), Mortgagor by this instrument shall have granted a mortgage upon and a security interest in such fee title interest and this instrument shall be deemed to create a mortgage, security interest in and lien upon such fee title.

**TO HAVE AND TO HOLD** the Mortgagor's interest in and to Premises, the Leasehold Estate and the other Collateral (defined below) unto Bank, its successors and assigns, subject only to the Permitted Exceptions, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of and during the continuance of any Default as hereinafter defined; Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

As to any of the Collateral which does not form a part and parcel of the Leasehold Estate, this Leasehold Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code as enacted in Illinois for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Bank as Secured Party (as said term is defined in the Uniform Commercial Code), securing the Indebtedness.

If the Indebtedness shall have been paid in full and all of the provisions herein, in the Reimbursement Agreement and the other Credit Agreements shall have been timely and fully observed and performed and provided no default or event of default shall have occurred and be continuing hereunder or thereunder, then the lien of this Leasehold Mortgage and the interest of Bank in the Premises shall be released at the cost of Mortgagor but shall otherwise remain in full force.

Notwithstanding, anything to the contrary contained herein, Mortgagor does not hereby grant and Bank shall not be deemed to have any security interest in the collateral

pledged pursuant to that certain Certificate Pledge Agreement by Mortgagor in favor of Owner (the "Certificate").

**MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:**

1. *Payment of Indebtedness and Performance of Covenants.* Mortgagor shall pay all liabilities under the Guaranty and punctually perform and observe all of the requirements of the Guaranty, this Leasehold Mortgage and the other Credit Agreements to which it is a party.

2. *Maintenance, Repair, Compliance with Law, Use, etc.* Mortgagor shall (a) promptly repair or restore any portion of the Improvements which may become damaged, whether or not proceeds of insurance are available or sufficient for that purpose; (b) maintain the Premises and keep the Premises in reasonable condition and free from waste; (c) pay all operating costs of the Premises; (d) comply with all requirements of law relating to the Premises or any part thereof by any governmental authority; (e) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; (f) comply with any restrictions of record with respect to the Premises and the use thereof; and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises and are necessary for its use and occupancy; and (g) cause the Premises to be operated and/or managed in a competent and professional manner. Without the prior written consent of Bank, Mortgagor shall not cause, suffer or permit any (i) change in the intended use or occupancy of the Premises for which the Improvements were constructed; (ii) change in the identity of the firm responsible for managing the Premises; (iii) zoning reclassification with respect to the Premises; or (iv) unlawful use of, or nuisance to exist upon, the Premises.

3. *Liens.*

3.1. *Prohibition.* Subject to the provisions of Paragraph 4 hereof, Mortgagor shall not create or suffer or permit any encumbrance or lien to attach to or be filed against the Premises, the Leasehold Estate, any other Collateral or any part thereof, other than the Permitted Exceptions.

3.2. *Contest of Mechanic's Liens Claims.* Notwithstanding the foregoing prohibition against encumbrances, Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any mechanic's lien and defer payment and discharge thereof during the pendency of such contest, provided that Mortgagor complies with the provisions set forth in Section 7(d) of the Reimbursement Agreement, which provisions are incorporated herein by reference.

4. *Taxes.*

4.1. *Payment.* Mortgagor shall pay when due and before the same becomes delinquent, all taxes, assessments and charges of every kind whatsoever, whether ordinary or extraordinary, which may be levied or assessed against the Premises or any interest therein or any obligation or instrument secured hereby, and all installments thereof (collectively, "Taxes"), whether or not assessed against Mortgagor, and Mortgagor shall furnish to Bank receipts therefor on or before the date the same are due; and shall discharge any claim or lien relating to Taxes upon the Premises, other than matters expressly permitted by the terms hereof.

4.2. *Contest.* Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Taxes, provided that Mortgagor complies with the provisions set forth in Section 7(d) of the Reimbursement Agreement, which provisions are incorporated herein by reference.

5. *Insurance Coverage.* Mortgagor will insure or cause the Premises to be insured against such perils and hazards, and in such amounts and with such limits, as Bank may from time to time reasonably require (the "Insurance Policies").

6. *Insurance Policies.* All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Bank. All Insurance Policies shall (i) include, when available, non-contributing Bank endorsements in favor of and with loss payable to Bank, (ii) include standard waiver of subrogation endorsements, (iii) provide that the coverage shall not be terminated or materially modified without fifteen (15) days' advance written notice to Bank and (iv) provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Bank. Mortgagor will deliver all Insurance Policies, or a certificate of insurance evidencing the same, premium prepaid, to Bank, and will deliver renewal or replacement policies or certificates at least thirty (30) days prior to the date of expiration of any policy. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagor concurrent in form or contributing in the event of loss with the Insurance Policies.

7. *Proceeds of Insurance.* Mortgagor will give Bank prompt notice of any material loss or damage to the Premises, and:

7.1. In case of loss or damage covered by any of the Insurance Policies, Bank (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) may at its option either (i) settle and adjust any claim under such Insurance Policies without the consent of Mortgagor, or (ii) allow Mortgagor to settle and adjust such claim without the consent of Bank; provided that, Mortgagor shall be permitted to settle and adjust any claim under such Insurance Policies in an amount not to exceed \$500,000. In the alternative, Mortgagor may deliver substitute property or collateral acceptable to Bank, and in such event Mortgagor shall settle and adjust the claim. Each insurance company which has issued an Insurance Policy is hereby authorized and directed to make payment for all losses covered by any Insurance Policy to Bank alone,

and not to Bank and Mortgagor jointly; provided, however, if Mortgagor delivers substitute collateral to Bank as provided herein, Bank shall direct the insurance company to deliver proceeds to Mortgagor.

7.2. Provided that no Default exists and is continuing under the terms of this Leasehold Mortgage or any Event of Default has occurred and is continuing under the Reimbursement Agreement and the other Credit Agreements (whether or not Mortgagor is a party thereto) at any time while restoration of the Property is being completed, Bank agrees to pay over (or cause to be paid over) to Mortgagor (provided Mortgagor complies with the following terms and conditions) any monies which may be received by Bank from insurance provided by Mortgagor or award payable with respect to such eminent domain proceeding; but in no event to any extent or in any sum exceeding the amount actually collected by Bank upon the loss in an amount not exceeding \$500,000. In the event of a loss or casualty in excess of \$500,000 or if a Default or Event of Default (described in the foregoing sentence) has occurred and is continuing, Bank shall, in its sole discretion: (i) apply such proceeds to the Indebtedness, whether or not then due, or (ii) make such proceeds available for repair and restoration of the Premises and the Personal Property Collateral.

7.3. If insurance proceeds are made available to Mortgagor for repair and restoration, Mortgagor shall restore or repair the Improvements to be of at least equal value and of substantially the same character as prior to such casualty, all to be effected in accordance with plans, specifications and procedures approved in advance by Bank, and Mortgagor shall pay all costs of such restoring or repairing.

8. *Disbursement of Insurance Proceed.* Insurance proceeds held by Bank for restoration or repairing of the Premises shall be disbursed from time to time upon Bank's being furnished with (i) evidence satisfactory to it of the estimated cost of the restoration or repair, (ii) funds sufficient in addition to the proceeds of insurance to fully pay for the restoration or repair and to pay debt service and all other costs, fees, and expenses required to be paid pursuant to the terms of the Bond Documents (as defined in the Reimbursement Agreement), this Leasehold Mortgage and the other Credit Agreements during the period of restoration or repair, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Bank may require and approve. No payment made prior to the final completion of the restoration or repair shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Bank in its sole judgment; funds deposited hereunder other than insurance proceeds shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of Bank, together with funds deposited or irrevocably committed, to the satisfaction of Bank, by or on behalf of Mortgagor to pay the cost of such repair or restoration, shall be sufficient in the reasonable judgment of Bank to pay the entire unpaid cost of the restoration or repair, free of all liens or claims for lien. Any surplus remaining out of insurance proceeds held by Bank after payment of such costs of restoration or repair shall be paid to Mortgagor, provided Mortgagor is not in default



hereunder. Interest shall be allowed to Mortgagor on account of any proceeds of insurance or other funds held by Bank at the Bank's prevailing money market rates.

9. *Condemnation and Eminent Domain.* All of Mortgagor's interest in and to awards (the "Awards") made to the present, or any subsequent, owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises, are hereby assigned by Mortgagor to Bank. Bank may settle, adjust and collect the Awards from the condemnation authorities, and may give appropriate acquittances therefor. Mortgagor shall immediately notify Bank of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Premises and shall deliver to Bank copies of all papers served in connection with any such proceedings. Mortgagor shall make, execute and deliver to Bank, at any time upon request, free of any encumbrance, any further assignments and other instruments deemed necessary by Bank for the purpose of assigning the Awards to Bank. After deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including reasonable attorney's fees, Bank shall be entitled to apply the net proceeds toward repayment of such portion of the Indebtedness as it deems appropriate without affecting the lien of this Leasehold Mortgage. If any portion of or interest in the Premises is taken by condemnation or eminent domain and the remaining portion of the Premises, in the judgment of Bank, is not a complete economic unit having equivalent value to the Premises as it existed prior to the taking, then Mortgagor may substitute additional property or collateral acceptable to Bank such that the Indebtedness does not exceed 80% of the appraised value of the Premises and such substitute additional collateral, and in such event the Award shall belong to Mortgagor. In the event of any partial taking of the Premises or any interest in the Premises, which, in the judgment of Bank, leaves the Premises as a complete economic unit having equivalent value to the Premises as it existed prior to the taking and provided Mortgagor is not in default hereunder, the Award shall be applied to reimburse Mortgagor for the cost of restoration and rebuilding the Premises in accordance with plans, specifications and procedures approved in advance by Bank, and such Award shall be disbursed in the same manner as is provided above for the application of insurance proceeds. If all or any part of the Award is not applied for reimbursement of such restoration costs, the Award shall at the option of Bank be applied against the Indebtedness, in such order or manner as Bank shall elect, or paid to Mortgagor.

10. *Security Agreement.* Mortgagor and Bank agree that this Leasehold Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) all sums at any time on deposit for the benefit of Bank or held by Bank (whether deposited by or on behalf of Mortgagor or any other person on behalf of Mortgagor, Owner or any other Loan Party) pursuant to any of the provisions of this Leasehold Mortgage or the other Credit Agreements and (ii) with respect to any personal property included in the granting clauses of this Leasehold Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code) (which property, together with all replacements thereof, substitutions therefor,

additions thereto and the proceeds thereof (all of said Personal Property and the replacements thereof, substitutions therefor, additions thereto and the proceeds thereof being sometimes hereafter collectively referred to as the "Personal Property Collateral"), and that a security interest in and to the Personal Property Collateral is hereby granted to Bank, and the Personal Property Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Bank, subject to the Permitted Exceptions, all to secure payment of the Indebtedness. All of the provisions contained in this Leasehold Mortgage pertain and apply to the Personal Property Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Leasehold Mortgage but shall be in addition thereto:

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

10.2. The Personal Property Collateral is to be used by Mortgagor solely and for business purposes.

10.3. The Personal Property Collateral will be kept at the Land and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Bank (being the Secured Party as that term is used in the Code). The Personal Property Collateral may be affixed to the Land but will not be affixed to any other real estate.

10.4. The only persons having any interest in the Personal Property Collateral are Mortgagor, Owner, Bank and holders of the Permitted Exceptions.

10.5. No Financing Statement (other than Financing Statements showing Bank as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Personal Property Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to Bank such further information and will execute and deliver to Bank such financing statements and other documents in form satisfactory to Bank and will do all such acts as Bank may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Personal Property Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than the Permitted Exceptions; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Bank to be desirable.

10.6. Upon the occurrence of a Default hereunder and during the continuation thereof, Bank shall have the remedies of a secured party under the Code, and Bank shall be entitled to hold, maintain, preserve and prepare the Personal Property Collateral for sale, until disposed of, or may propose to retain the Personal Property

Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Bank will give Mortgagor at least twenty (20) days' notice of the time and place of any public sale of the Personal Property Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least twenty (20) days before the time of the sale or disposition. Bank may buy at any public sale. Bank may buy at private sale if the Personal Property Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Bank so elects, the Premises and the Personal Property Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorney's fees and legal expenses incurred by Bank, shall be applied against the Indebtedness then due and owing, by acceleration or otherwise, in such order or manner as Bank shall select. Bank will account to Mortgagor for any surplus on such disposition.

10.7. The terms and provisions contained in this Paragraph 10 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

10.8. This Leasehold Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Personal Property Collateral and the goods described herein, which goods are or may become Fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Bank (Secured Party) are hereinabove set forth. This Leasehold Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located.

11. *Restrictions on Transfer.*

11.1. Mortgagor shall not, without the prior written consent of Bank, effect, suffer or permit any "**Prohibited Transfer**" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "**Prohibited Transfer**":

(a) The Premises, the Leasehold Estate, the Personal Property Collateral or any part thereof or interest therein, excepting only sales or other dispositions of Personal Property Collateral (herein called "**Obsolete Collateral**") no longer useful in connection with the operation of the Premises; provided that if the Obsolete Collateral is necessary for the operation of the Property, prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Personal Property Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral, unless Mortgagor shall

substitute additional property or collateral acceptable to Bank, in Bank's reasonable discretion;

(b) Any transfers of any member's interests of Mortgagor; provided that nothing contained herein shall be deemed to prohibit any transfer of any equity interest in the sole member of Mortgagor, which member is a publicly traded company; or

(c) Any transfer in violation of Section 11.3.

In each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Paragraph 11 shall not apply (i) to liens securing the Indebtedness, or (ii) to the lien of current taxes and assessments not in default, or (iii) the Permitted Exceptions.

11.2. Notwithstanding anything contained in this Leasehold Mortgage or any other Credit Agreement, provided no Default or Event of Default has occurred or is continuing under this Leasehold Mortgage or any other Credit Agreement, as applicable, Mortgagor may effect or cause to be effected a transfer of the Premises or the Personal Property Collateral from Owner to Mortgagor and terminate the Operating Lease in accordance with the terms of the Operating Lease on the condition that: (i) Mortgagor shall deliver not less than ten (10) Business Days (as defined in the Assumption Agreement) notice to Bank of its intent to acquire fee to the interest in the Premises and (ii) Mortgagor shall execute any and all documents reasonably required by Bank to evidence Mortgagor's assumption of the obligations and liabilities of Owner, as debtor, under the Fee Mortgage, the Reimbursement Agreement, the Bond Documents and the other Credit Agreements.

11.3. Mortgagor shall not merge into or consolidate with any person or dissolve, terminate or liquidate, in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Bank's consent; provided that, if no Default or Event of Default under the terms of this Leasehold Mortgage or the other Loan Documents, as applicable, has not occurred and is continuing, Mortgagor may so merge, consolidate or transfer all or substantially all of its assets with or to Owner in accordance with the terms of the Lease if (A) Mortgagor shall deliver not less than ten (10) Business Days notice to Bank of its intent to merge or to consolidate or to transfer the Property to Owner, (B) Mortgagor shall execute any and all documents, agreements and instruments reasonably required by Bank to evidence Mortgagor's assumption of the obligations and liabilities of Borrower, as debtor, under the Assumption Agreement, under the other Credit Documents and the Bond Documents.

12. *Defaults.* If one or more of the following events (any one of which is herein called a "Default" and two or more of which are herein collectively called "Defaults") shall occur:

12.1. the occurrence of a Prohibited Transfer; or

12.2. the occurrence of any default or event of default under the Reimbursement Agreement, the Guaranty or any of the other Credit Agreements which is not cured within the time period provided therefor, if any; then Bank may, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Bank hereunder, declare, without further notice, all Indebtedness immediately due with interest thereon at the Default Rate (as defined in the Reimbursement Agreement), whether or not such Default be thereafter remedied by Mortgagor, and Bank may immediately proceed to foreclose this Leasehold Mortgage and to exercise any right and/or remedy provided by this Leasehold Mortgage, the Reimbursement Agreement or any of the other Credit Agreements.

13. *Foreclosure.* When the Indebtedness shall become due, whether by acceleration or otherwise, Bank shall have the right to foreclose the lien hereof in accordance with the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 et seq. (1987) (the "Act") and to exercise any other remedies of Bank provided in the Reimbursement Agreement, this Leasehold Mortgage or any of the other Credit Agreements or which Bank may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Bank for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Bank may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises, and any other expenses and expenditures which may be paid or incurred by or on behalf of Bank and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Leasehold Mortgage, including the fees of any attorney employed by Bank in any litigation or proceedings affecting this Leasehold Mortgage or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suite or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid.

14. *Right of Possession.* When the Indebtedness shall become due, whether by acceleration or otherwise, or if Bank has a right to institute foreclosure proceedings, Mortgagor shall, forthwith upon demand of Bank, surrender to Bank, and Bank shall be entitled to be placed in possession of, the Premises and the other Collateral as provided in

the statutes relating to the foreclosure of mortgages, and Bank, in its discretion and pursuant to court order, may enter upon and take and maintain possession of all or any part of the Premises and the other Collateral, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Premises and the other Collateral relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor or such owner, or in its own name as Bank and under the powers herein granted:

14.1. hold, operate, manage and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents;

14.2. make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements in connection with the Premises as may seem judicious to Bank, to insure and reinsure the Premises and all risks incidental to Bank's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom; and

14.3. apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness in such order and manner as Bank shall select.

Without limiting the generality of the foregoing, Bank shall have all power, authority and duties as provided in the statutes relating to the foreclosure of mortgages. Nothing herein contained shall, be construed as constituting Bank a mortgagee in possession in the absence of the actual taking of possession of the Premises.

15. *Receiver.* Upon the institution of a foreclosure proceeding or at such later time as required by law, if any, or at any time thereafter, the court in which such proceeding is instituted may appoint upon petition of Bank, and at Bank's sole option, a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and Bank hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed law, including the power to make leases to be binding upon all parties, including the mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure. In addition, such receiver shall also have the power to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the final date for payment of liabilities and performance of obligations set forth in the Reimbursement Agreement, this Leasehold Mortgage and the other Credit Agreements and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or

other provisions to be contained therein, shall be binding on Mortgagor and all the persons whose interest in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in payment in whole or in part of: (a) the Indebtedness or the indebtedness secured by a decree foreclosing this Leasehold Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

16. *Foreclosure Sale.* Except to the extent otherwise required by the statutes relating to the foreclosure of mortgages, the proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, all items which under the terms hereof constitute Indebtedness in such order as Bank shall elect with interest thereon as herein provided; and lastly any surplus to Mortgagor and its successors and assigns, as their rights may appear.

17. *Insurance During Foreclosure.* All rights and powers of Bank under Paragraphs 7 and 8 hereof shall, from and after the entry of judgment of foreclosure, continue in the Bank as decree creditor until confirmation of sale. In case of an insured loss after foreclosure has been instituted, the proceeds of any insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditors. In the event of foreclosure sale, Bank may, without the consent of Mortgagor, assign any Insurance Policies to the purchaser at the sale, or take such other steps as Bank may deem advisable to protect the interest of such purchaser.

18. *Waiver of Right of Redemption.* To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to

any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or claim or exercise any rights under any statute now or hereafter in force to redeem the property or any part thereof, or relating to the marshalling thereof, on foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights to redemption provided by law or equity on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Bank, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Guaranty and the other Credit Agreements to which Mortgagor is a party. Mortgagor acknowledges that the Premises do not constitute residential real estate.

19. *Bank's Performance of Mortgagor's Obligations.* Upon the occurrence of a Default and during the continuation thereof, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof, Bank may, but shall not be required to, make any payment or perform any act herein required of Mortgagor in any manner deemed expedient to Bank. Bank may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs, including management fees, of every kind in connection therewith, so that the Premises shall be useable for their intended purposes. All such monies paid and expenses incurred, including reasonable attorney's fees, shall be so much additional Indebtedness, whether or not the Indebtedness, as a result thereof, shall exceed the face amount of the Indebtedness, and shall become immediately due with interest thereon at the Default Rate. Inaction of Bank shall never be considered a waiver of any right accruing to it on account of any Default nor shall the provisions of this Paragraph or any exercise by Bank of its rights hereunder prevent any default from constituting a Default. Bank, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs thereof, may



do so in such amounts and to such persons as Bank may deem appropriate. Nothing contained herein shall be construed to require Bank to advance monies for any purpose.

20. *Rights Cumulative.* Each right herein or in any of the other Credit Agreements conferred upon Bank is cumulative and in addition to every other right provided by law or in equity, and Bank may exercise each such right in any manner deemed expedient to Bank. Bank's exercise or failure to exercise any right shall not be deemed a waiver of that right or any other right or a waiver of any default. Except as otherwise specifically required herein, Bank is not required to give notice of its exercise of any right given to it by this Leasehold Mortgage.

21. *Successors and Assigns.*

21.1. *Holder of Reimbursement Agreement and Other Credit Agreements.* This Leasehold Mortgage and each provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of Bank and its successors and assigns. Wherever herein Bank is referred to, such reference shall be deemed to include the holder from time to time of the Guaranty and the other Credit Agreements; and each such holder shall have all of the rights afforded hereby, and may enforce the provisions hereof, as fully as if Bank had designated such holder of the Guaranty and the other Credit Agreements herein by name.

21.2. *Covenants Run with Land; Successor Owners.* All of the covenants of this Leasehold Mortgage shall run with the Land and be binding on any successor owners of the Land, including successors in interest to the Leasehold Estate. If the ownership of the Leasehold Estate (or the Premises, if Mortgagor were to hereafter become or be deemed to be the fee title owner of the Premises) or any portion thereof becomes vested in a person other than Mortgagor, Bank may, without notice to Mortgagor, deal with such person with reference to this Leasehold Mortgage in the same manner as with Mortgagor without in any way releasing Mortgagor from its obligations hereunder. Mortgagor will give immediate written notice to Bank of any conveyance, transfer or change of ownership of the Leasehold Estate or Premises, but nothing in this paragraph shall vary the effectiveness of the provisions of Paragraph 11 hereof.

22. *Effect of Extensions and Amendments.* If the payment of the Indebtedness, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Bank, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall

take the said lien subject to the rights of Bank to amend, modify, extend or release the Reimbursement Agreement, the Guaranty, this Leasehold Mortgage or any other Credit Agreement, in each case without obtaining the consent of the holder of such junior lien and without the lien of this Leasehold Mortgage losing its priority over the rights of any such junior lien.

23. *Environmental Matters.* Mortgagor represents that, to its knowledge, the Premises are currently in compliance with, and covenants and agrees that it will manage and operate the Premises and will cause each tenant to occupy its demised portion of the Premises in substantial compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes). Mortgagor further covenants and agrees that it shall not install or permit to be installed in the Premises asbestos or any substance containing asbestos and deemed hazardous by or in violation of federal, state or local laws, rules, regulations or orders respecting such material. Mortgagor shall remove from the Premises and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances and shall take any and all other action to remedy, rectify, rehabilitate and correct any violation of any applicable law, rule, regulation or ordinance concerning toxic or hazardous substances or any violation of any agreement entered into between Mortgagor, Bank and/or any third party with respect to hazardous or toxic materials. Mortgagor shall send to Bank, within five (5) Business Days of receipt thereof, any citation, notice of violation or other notice of potential liability from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities.

24. *Leasehold Mortgage Provisions.*

24.1. Notwithstanding anything contained herein to the contrary, and in addition to any rights, privileges and remedies granted to Bank elsewhere in this Leasehold Mortgage, Bank shall have, and Mortgagor hereby grants to Bank any and all rights, privileges and remedies of the tenant provided for in the Operating Lease (including without limitation, any renewal rights and options to purchase contained in the Operating Lease) without the necessity of particularly specifying any or all of such rights, privileges and remedies that are or could be granted to leasehold mortgagees pursuant to the Operating Lease.

24.2. Mortgagor hereby represents, covenants and agrees that:

(i) This Leasehold Mortgage is lawfully executed and delivered in conformity with the Operating Lease.

(ii) Mortgagor will pay when due the rents, taxes and other sums and charges mentioned in and made payable by Mortgagor under the Operating Lease.

(iii) Mortgagor will promptly, in all material respects, perform and observe all of the terms, covenants and conditions required to be performed and observed by it under the Operating Lease, within the periods (including any grace or cure periods) provided therein, and will do all things necessary to preserve and to keep unimpaired its rights under the Operating Lease. In the event of the failure of Mortgagor to make any payment required to be made by the lessee pursuant to the provisions of the Operating Lease or to observe, abide by, discharge or perform, or cause to be observed, kept, discharged or performed, any of the terms, obligations, covenants, conditions, agreements, indemnities, representations, warranties or liabilities of the Operating Lease on the part of lessee thereunder to be observed, kept, discharged and performed, Mortgagor does hereby irrevocably appoint and constitute Bank as its true and lawful attorney in fact, which appointment is coupled with an interest, in its name, place and stead, to take any and all actions deemed reasonably necessary or desirable by Bank to perform and comply with all of the obligations of Mortgagor under the Operating Lease, to do and take, but without any obligation so to do, any action which Bank deems necessary or desirable to prevent or cure any default by Mortgagor under the Operating Lease upon five (5) Business Days notice to the Mortgagor, to enter into and upon the Premises or any part thereof to such extent and as often as Bank, in its reasonable discretion, deems necessary or desirable in order to prevent or cure any default of Mortgagor pursuant thereto, to the end that the rights of Mortgagor in and to the leasehold estate created by the Operating Lease shall be kept unimpaired and free from default, and all sums so expended by Bank, shall be paid by Mortgagor to Bank promptly within five (5) Business Days after demand therefor, and any amount not paid within said five (5) Business Day period shall bear interest at the Default Rate and shall be added to the Indebtedness and Bank shall have, in addition to any other remedy of Bank, the same rights and remedies in the event of non-payment of any such sum by the payment of any sums due under the Guaranty and the other Credit Agreements to which Mortgagor is a party. Mortgagor shall, within five (5) Business Days after written request by Bank, execute and deliver to Bank, or to any person designated by Bank, such further instruments, agreements, powers, assignments, conveyances or the like as may be necessary to complete or perfect the interest, rights or powers of Bank pursuant hereto.

(iv) Mortgagor will promptly (A) notify Bank in writing of the receipt by it of any notice of default from the lessor under the Operating Lease; (B) notify Bank in writing of the receipt by it of any notice under the Operating Lease of the termination of the Operating Lease; (C) cause a copy of each such material notice received by Mortgagor from the lessor under the Operating Lease to be delivered to Bank; and (D) cause a copy of any notice of election or the exercise of any rights of option, purchase or renewal under the Operating Lease sent by Mortgagor to the lessor under the Operating Lease, to be delivered to Bank.

(v) Except as provided in Section 11.2, Mortgagor will not, without prior written consent of Bank, terminate or surrender or suffer or permit any termination

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or surrender of the Operating Lease, nor modify the Operating Lease in any material respect.

(vi) Mortgagor will, after written demand from Bank, use reasonable efforts to obtain from the lessor under the Operating Lease and deliver to Bank an estoppel certificate in the form and substance acceptable to Bank.

(vii) Mortgagor will furnish to Bank upon demand, proof of payment of all items which are required to be paid by Mortgagor pursuant to the Operating Lease and a statement of any such payments which Mortgagor is contesting or arbitrating pursuant to the terms of the Operating Lease.

(viii) Except as otherwise provided in the Operating Lease, Mortgagor will not consent to the subordination of the Operating Lease to any lien on the fee estate of the lessor under the Operating Lease.

25. *Subordination of Operating Lease.* Mortgagor hereby covenants and agrees:

25.1. The Operating Lease and all rights and titles of Mortgagor thereunder are and shall be subject and subordinate to the lien of the Fee Mortgage and to all renewals, modifications, consolidations, replacements, and extensions thereof, to the full extent of the principal sum secured thereby, interest thereon, and all other amounts and sums secured thereby. Mortgagor further waives all rights and claims to assert that the Operating Lease or any provision thereof is superior to the lien of or to any other provision of the Fee Mortgage or any renewal, increase, replacement, consolidation, modification or extension thereof.

25.2. If the Bank (or any other party) shall acquire title to the Property or shall succeed to Owner's interest in the Operating Lease, whether through foreclosure of the Fee Mortgage, conveyance in lieu of foreclosure, or otherwise, neither Bank (or such other party), nor any other party affiliated with Bank shall be:

(a) liable for any act or omission of any prior lessor under the Operating Lease (including the Owner) or damages (actual, punitive or consequential) arising therefrom; or

(b) subject to any offsets or defenses which Mortgagor might have against any prior lessor under the Operating Lease (including the Owner); or

(c) bound by any amendments or modification of the Operating Lease made without Bank's prior written consent; or

(d) bound by or required to credit Mortgagor with any prepayment of rent or any deposit, rental security or any other sums deposited with any prior lessor under the Operating Lease (including the Owner) unless said sum is actually received by Bank; or

(e) liable for the completion of any construction of the Premises or Mortgagor improvements to the Premises commenced or agreed to by any prior lessor (including Owner which are not currently set forth in the Operating Lease); or

(f) liable for the payment of any fees or penalties payable by any prior lessor (including Owner) to Mortgagor.

25.3. Mortgagor hereby waives, to the extent permitted by law, the provisions of any statute or rule of law now or hereafter in effect which may give or purport to give Mortgagor any right or election to terminate or otherwise adversely affect the Operating Lease and the obligations of Mortgagor hereunder or thereunder by reason of any foreclosure proceeding.

25.4. Mortgagor hereby acknowledges that Owner has executed and delivered or will execute and deliver that certain Assumption of Mortgage and of Assignment of Rents and Subordination Agreement, dated even date herewith, to Bank to secure the obligations of Owner to Bank, and Mortgagor covenants and agrees as follows for the benefit and reliance of Bank:

(a) That, except as expressly permitted pursuant to Section 11.2 it will not, without the express written consent of Bank, which consent shall not be unreasonably withheld or delayed: (i) cancel, terminate or surrender the Operating Lease; (ii) alter, amend or modify any material term of the Operating Lease; (iii) enter into any agreement with Owner, its successors or assigns, which grants any material concession with respect to the Operating Lease or which reduces the rent called for thereunder; (iv) prepay rent for more than 30 days in advance; or (v) consent to the release of any party having liability under the Operating Lease.

(b) That Mortgagor shall, except to the extent prohibited by law or legal proceedings, make rental payments under the Operating Lease to Bank pursuant to and upon written demand by Bank, if such demand states that a default has occurred under the Fee Mortgage, and Owner agrees that any payments so made to Bank shall be deemed to have been made in accordance with and in satisfaction of Mortgagor's obligation to pay rent under the Operating Lease.

25.5. Notwithstanding the foregoing, Bank hereby expressly disclaims any interest under the Certificate.

26. *Representations Relating to Operating Lease.* Mortgagor certifies, warrants, and represents to Bank as follows:

26.1. A true, correct and complete copy of the Operating Lease and all amendments, modifications and supplements thereto have been delivered to Bank concurrently herewith.

26.2. The Operating Lease has been duly authorized, executed and delivered by Mortgagor, is in full force and effect, has not been terminated and constitutes the binding obligations of Mortgagor in accordance with its terms, as such enforcement may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance and other similar laws now or hereafter in effect relating to or affecting creditors' rights generally.

26.3. There presently is no default or other wrongful act or omission by Owner under the Operating Lease or otherwise in connection with Mortgagor's occupancy of the Premises. There is no state of facts which, with the passage of time or the giving of notice or both, could ripen into a default on the part of Mortgagor, or to the best knowledge of Mortgagor, could ripen into a default on the part of Owner under the Operating Lease.

26.4. The Operating Lease constitutes the complete agreement between Owner and Mortgagor relating to the use and possession of the Premises, and except as modified by the Operating Lease amendments noted above (if any), has not been modified, altered or amended.

26.5. Nothing contained in this Leasehold Mortgage shall in any way impair or affect the lien created by the Fee Mortgage, or any modifications, amendments, extensions or renewals thereof.

26.6. Mortgagor has accepted possession and is currently occupying the Premises, pursuant to the terms of the Operating Lease, subject only to the rights of lessees under the Subleases.

26.7. Mortgagor will keep the Operating Lease in full force and effect at all times during the term of the Reimbursement Agreement and will exercise all options to extend no later than thirty (30) days prior to the last date granted therefor. Mortgagor will deliver a copy of each notice of its option to extend.

27. *Future Advances.* At all times, this Leasehold Mortgage secures as part of the Indebtedness, the payment of all loan commissions, service charges, liquidated damages, reasonable attorneys' fees, expenses and advances due to or incurred by Bank in connection with the Indebtedness, all in accordance with the Reimbursement Agreement, this Leasehold Mortgage and the other Credit Agreements, provided, however, that in no event shall the total amount of the Indebtedness, including loan proceeds disbursed plus any additional charges, exceed \$32,000,000.

28. *Execution of Separate Security Agreements, Financing Statements, etc; Estoppel Letter.* Mortgagor will do, execute, acknowledge and deliver all such further acts,

conveyances, notes, mortgages, security agreements, financing statements and assurances as Bank shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto Bank all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired. From time to time, Mortgagor will furnish within five (5) Business Days after Bank's request a written and duly acknowledged statement of the Indebtedness and whether any alleged offsets or defenses exist against the Indebtedness.

29. *Subrogation.* If any part of the Indebtedness is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Collateral or any part thereof, then Bank shall be subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

30. *Option to Subordinate.* At the option of Bank, this Leasehold Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation), to any and all subleases of all or any part of the Premises, or other documents pursuant to which a third party occupies all or any part of the Premises, upon the execution by Bank and recording at any time, in the Office of the Recorder of Deeds for the county wherein the Premises are situated, of a unilateral declaration to that effect.

31. *Governing Law.* This Leasehold Mortgage shall be construed and enforced according to the laws of Illinois. If any provision in this Leasehold Mortgage shall be inconsistent with any provision of applicable law, the provisions of such law shall take precedence over the provisions of this Leasehold Mortgage, but shall not invalidate or render unenforceable any other provision of this Leasehold Mortgage that can be construed in a manner consistent with applicable law. If any provision of this Leasehold Mortgage shall grant to Bank any rights or remedies upon Default of Mortgagor which are more limited than the rights that would otherwise be vested in Bank under applicable law in the absence of said provision, Bank shall be vested with the rights granted in such law to the full extent permitted by law.

32. *Exceptions to Usury.* The proceeds of the Reimbursement Agreement, this Leasehold Mortgage and the other Credit Agreements will be used for the purposes specified in 815 ILCS 205/4 (1987), and the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section. Mortgagor represents and warrants that Mortgagor is a duly organized, validly existing limited liability company, and that the Mortgagor will directly benefit from the consents granted by Bank concurrently herewith.

33. *Use.* Mortgagor represents and warrants that the Improvements are or will be in use on the date hereof principally as a senior independent and assisted living facility.

34. *No Joint Ventures.* Mortgagor acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event shall Bank be deemed

to be a partner or joint venturer with Mortgagor. Bank shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Leasehold Mortgage or any other of the Credit Agreements.

35. *Time of the Essence.* Time is of the essence.

36. *Captions and Pronouns.* The captions and headings of the various sections of this Leasehold Mortgage are for convenience only, and are not to be construed as confirming or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

37. *Severability.* If all or any portion of any provision of this Leasehold Mortgage or the other Credit Agreements shall be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

38. *Notices.* Any notice or other communication which any party hereto may desire or may be required to give to any other party hereto shall be given in the manner set forth in the Guaranty.

39. *Anti-forfeiture.* Mortgagor hereby expressly represents and warrants to Bank that there has not been committed by Mortgagor or any other person involved with the Premises any act or omission affording the federal government or any state or local government the right of forfeiture as against the Premises or any part thereof or any monies paid in performance of its obligations under the Guaranty, this Leasehold Mortgage or any of the other Credit Agreements, and Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. In furtherance thereof, Mortgagor agrees to indemnify, defend with counsel reasonably acceptable to Bank (at Mortgagor's sole cost) and hold Bank harmless from and against any claim or other cost (including, without limitation, reasonable attorneys' fees and costs incurred by Bank), damage, liability or injury by reason of the breach of the covenants and agreements or the warranties and representations set forth in the prior sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor, Bank or all or any part of the Premises under any federal or state law in which forfeiture of the Premises or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Reimbursement Agreement, this Leasehold Mortgage or any of the other Credit Agreements is a potential result shall, at the election of Bank, constitute a Default hereunder without notice or opportunity to cure.

40. *Limitation of Liability.* Notwithstanding anything to the contrary contained herein, nothing contained herein shall be deemed to impose liability on any member, manager, officer, agent, affiliate or director personally to pay any liability or perform any obligation hereunder or under any other Credit Agreement.



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41. *Jury Trial Waiver.* The Mortgagor waives, to the extent permitted by law, trial by jury in any actions brought by either the Mortgagor or Bank in connection with the Indebtedness.

42. *No Merger.* It is the desire and intention of the parties hereto that this Leasehold Mortgage and the lien hereof shall not merge in fee simple title to the Premises, unless a contrary intent is ever manifested by Bank as evidenced by an express statement to that effect in an appropriate document duly recorded. Therefore, it is hereby understood and agreed that should Bank acquire any additional or other interests in or to the Premises or the ownership thereof, then this Leasehold Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Leasehold Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

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IN WITNESS WHEREOF, Mortgagor has caused this Leasehold Mortgage and Security Agreement to be duly signed and delivered as an instrument under seal as of the day and year first above written.

MORTGAGOR:

**BROOKDALE LIVING COMMUNITIES OF ILLINOIS – HOFFMAN ESTATES, LLC**, a Delaware limited liability company

By: R. Stanley Young  
Title: R. Stanley Young

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STATE OF ILLINOIS                    )  
  ) SS.  
COUNTY OF COOK                    )

I, Catherine S. DeNardo, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that R. Stanley Young, the V.P. & Treasurer of Brookdale Living Communities of Illinois - Hoffmann Estate, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, as such V.P. & Treasurer appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 21<sup>st</sup> day of December, 1999

Catherine S. DeNardo  
Notary Public

My Commission expires: June 1, 2003



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## EXHIBIT A

### Legal Description of Real Estate

#### PARCEL 1:

THAT PART OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 7, THENCE NORTH 0 DEGREES 02 MINUTES 20 SECONDS EAST ALONG THE WEST LINE OF THE SOUTHWEST  $\frac{1}{4}$  OF SAID SECTION 7, A DISTANCE OF 48.49 FEET MORE OR LESS, TO THE WESTERLY EXTENSION OF THE NORTH LINE OF GOLF ROAD, AS DEDICATED PER DOCUMENT NUMBER 10550563, BEING 100 FEET WIDE; THENCE NORTH 86 DEGREES 29 MINUTES 47 SECONDS EAST ALONG SAID WESTERLY EXTENSION A DISTANCE OF 50.10 FEET, MORE OR LESS, TO A POINT ON THE EAST LINE OF THE WEST 50 FEET, MEASURED PERPENDICULARLY, OF THE SOUTHWEST  $\frac{1}{4}$  OF SAID SECTION 7, SAID POINT ALSO BEING ON THE EAST LINE OF BARRINGTON ROAD AS DEDICATED PER PLAT THEREOF RECORDED DECEMBER 7, 1932 PER DOCUMENT NUMBER 11172679; THENCE NORTH 0 DEGREES 02 MINUTES 20 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 450.00 FEET TO A POINT; THENCE CONTINUING NORTH 0 DEGREES 02 MINUTES 20 SECONDS EAST, ALONG SAID EAST LINE, A DISTANCE OF 589.33 FEET TO THE PLACE OF BEGINNING; THENCE CONTINUING NORTH 0 DEGREES 02 MINUTES 20 SECONDS EAST ALONG EAST LINE, A DISTANCE OF 855.00 FEET, MORE OR LESS, TO THE MOST WESTERLY CORNER OF LOT 1 IN PETER ROBIN FARMS UNIT FOUR, RECORDED APRIL 30, 1975 PER DOCUMENT NUMBER 23066244; THENCE SOUTH 89 DEGREES 57 MINUTES 40 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 342.80 FEET TO A CORNER OF SAID LOT 1, THENCE SOUTH 49 DEGREES 16 MINUTES 32 SECONDS EAST, A DISTANCE OF 351.32 FEET TO THE MOST NORTHERLY CORNER OF PARCEL "B" IN PLAT OF EASEMENTS FOR OPEN SPACES, AS PER PLAT THEREOF RECORDED APRIL 24, 1973 PER DOCUMENT NUMBER 22299742; THENCE SOUTH 24 DEGREES 10 MINUTES 09 SECONDS WEST ALONG A WESTERLY LINE OF SAID PARCEL "B" A DISTANCE OF 766.92 FEET; THENCE NORTH 75 DEGREES 55 MINUTES 21 SECONDS WEST, A DISTANCE OF 304.78 FEET, TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS. (EXCEPTING THEREFROM, THAT PART OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, CONVEYED FOR ROAD PURPOSES AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 7; THENCE NORTH 0 DEGREES 02 MINUTES 23 SECONDS EAST 48.49 FEET ALONG THE WEST LINE OF SAID SECTION 7 TO THE WESTERLY EXTENSION OF THE OLD NORTH LINE OF GOLF ROAD AS DEDICATED PER DOCUMENT NUMBER 10550563 RECORDED DECEMBER 10, 1929; THENCE NORTH 87 DEGREES 02 MINUTES 23 SECONDS EAST 50.07 FEET

ALONG THE WESTERLY EXTENSION OF SAID OLD NORTH LINE OF GOLF ROAD TO THE EXISTING EAST LINE OF BARRINGTON ROAD EXTENDED; THENCE NORTH 0 DEGREES 02 MINUTES 23 SECONDS EAST 450.00 FEET ALONG THE EXISTING EAST LINE OF BARRINGTON ROAD PER DOCUMENT NUMBER 11172679, RECORDED DECEMBER 7, 1932, TO THE POINT OF BEGINNING, A POINT ON A LINE PARALLEL WITH THE SAID OLD NORTH LINE OF GOLF ROAD AND 450 FEET DISTANT FROM SAID OLD NORTH LINE OF GOLF ROAD; THENCE CONTINUING NORTH 0 DEGREES 02 MINUTES 23 SECONDS EAST 1444.70 FEET ALONG THE EXISTING EAST LINE OF BARRINGTON ROAD TO THE SOUTH LINE OF LOT 1 OF PETER ROBIN FARMS UNIT FOUR, RECORDED AS DOCUMENT NUMBER 23066244 ON APRIL 30, 1975; THENCE SOUTH 89 DEGREES 57 MINUTES 37 SECONDS EAST (SOUTH 89 DEGREES 57 MINUTES 40 SECONDS EAST RECORD BEARING) 20.00 FEET ALONG SAID SOUTH LINE; THENCE SOUTH 0 DEGREES 02 MINUTES 23 SECONDS WEST 187.71 FEET TO A 3-1/4 INCH METAL DISK; THENCE NORTH 89 DEGREES 57 MINUTES 37 SECONDS WEST 5.00 FEET TO A 3-1/4 INCH METAL DISK; THENCE SOUTH 0 DEGREES 02 MINUTES 23 SECONDS WEST 160 FEET TO A 3-1/4 INCH METAL DISK; THENCE SOUTH 89 DEGREES 57 MINUTES 37 SECONDS EAST 5.00 FEET TO A 3-1/4 INCH METAL DISK; THENCE SOUTH 0 DEGREES 02 MINUTES 23 SECONDS WEST 540.00 FEET TO A 3-1/4 INCH METAL DISK; THENCE NORTH 89 DEGREES 57 MINUTES 37 SECONDS WEST 10.00 FEET TO A 3-1/4 INCH METAL DISK; THENCE SOUTH 0 DEGREES 02 MINUTES 23 SECONDS WEST 410.00 FEET TO A 3-1/4 INCH METAL DISK; THENCE NORTH 89 DEGREES 57 MINUTES 37 SECONDS WEST 5.00 FEET TO A 3-1/4 INCH METAL DISK; THENCE SOUTH 0 DEGREES 02 MINUTES 23 SECONDS WEST 146.71 FEET TO A LINE PARALLEL WITH THE SAID OLD NORTH LINE OF GOLF ROAD AND 450 FEET DISTANT FROM SAID OLD NORTH LINE OF GOLF ROAD; THENCE SOUTH 87 DEGREES 02 MINUTES 23 SECONDS WEST 5.01 FEET ALONG SAID LINE TO THE POINT OF BEGINNING; ALL IN COOK COUNTY ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INGRESS AND EGRESS, AS CREATED IN THE GRANTS OF EASEMENTS AND AGREEMENT DATED AUGUST 4, 1987 AND RECORDED SEPTEMBER 16, 1987 AS DOCUMENT NUMBER 87506866, AS AMENDED BY FIRST AMENDMENT TO GRANTS OF EASEMENT AND AGREEMENT RECORDED APRIL 8, 1991 AS DOCUMENT 91156362, OVER, UPON AND ACROSS THE FOLLOWING DESCRIBED LAND:

THAT PART OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1 IN PETER ROBIN FARMS, UNIT FOUR, ACCORDING TO THE PLAT THEREOF, RECORDED APRIL 30, 1975 AS DOCUMENT 23066244, SAID POINT BEING ON THE EAST LINE OF BARRINGTON ROAD, ACCORDING TO THE PLAT OF DEDICATION THEREOF, RECORDED

DECEMBER 7, 1932 AS DOCUMENT NUMBER 11172679; THENCE NORTH 0 DEGREES 02 MINUTES 20 SECONDS EAST, ALONG THE WEST LINE OF SAID LOT 1, AND ALONG THE EAST LINE OF BARRINGTON ROAD, A DISTANCE OF 35 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 40 SECONDS EAST, A DISTANCE OF 342.80 FEET; THENCE SOUTH 00 DEGREES 02 MINUTES 40 SECONDS WEST, A DISTANCE OF 70.00 FEET, TO AN ANGLE POINT ON THE SOUTH LINE OF SAID LOT 1; THENCE NORTH 89 DEGREES 57 MINUTES 40 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 342.80 FEET, TO THE MOST WESTERLY CORNER OF SAID LOT 1 AND TO THE EAST LINE OF BARRINGTON ROAD; THENCE NORTH 00 DEGREES 02 MINUTES 20 SECONDS EAST, ALONG THE WEST LINE OF SAID LOT 1 AND ALONG THE EAST LINE OF SAID BARRINGTON ROAD, A DISTANCE OF 35.00 FEET, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR PERMANENT SANITARY SEWER AS CREATED BY AGREEMENT AND DECLARATION OF GRANT OF PERMANENT SANITARY SEWER EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT RECORDED SEPTEMBER 1, 1987 AS DOCUMENT NUMBER 87481947 OVER THE FOLLOWING LAND:

A STRIP OF LAND 20 FEET IN WIDTH, 10 FEET EACH SIDE OF THE CENTERLINE, IN THE SOUTH HALF OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID CENTERLINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 7, THENCE NORTH 85 DEGREES 15 MINUTES 10 SECONDS EAST, ALONG THE SOUTH LINE OF THE SOUTHWEST  $\frac{1}{4}$  OF SAID SECTION 7, A DISTANCE OF 1560.85 FEET, TO THE SOUTHEAST CORNER OF THE SOUTHWEST  $\frac{1}{4}$  OF SAID SECTION 7, THENCE NORTH 8 DEGREES 15 MINUTES 58 SECONDS WEST, A DISTANCE OF 100.05 FEET TO THE CENTER OF AN EXISTING SANITARY SEWER MANHOLE FOR THE POINT OF BEGINNING; THENCE NORTH 43 DEGREES 19 MINUTES 13 SECONDS WEST, A DISTANCE OF 50.00 FEET; THENCE NORTH 25 DEGREES 51 MINUTES 25 SECONDS WEST, A DISTANCE OF 107.44 FEET; THENCE NORTH 65 DEGREES 9 MINUTES 27 SECONDS WEST, A DISTANCE OF 138.44 FEET; THENCE NORTH 86 DEGREES 42 MINUTES 25 SECONDS WEST, A DISTANCE OF 75 FEET, TO AN ANGLE POINT IN THE SOUTHERLY LINE OF PARCEL "B" IN THE PLAT OF EASEMENTS FOR OPEN SPACES, RECORDED APRIL 24, 1973 AS DOCUMENT NO. 22299742; THENCE CONTINUING NORTH 86 DEGREES 42 MINUTES 25 SECONDS WEST, ALONG THE SOUTHERLY LINE OF SAID PARCEL "B", A DISTANCE OF 580.48 FEET; THENCE NORTH 75 DEGREES 48 MINUTES 45 SECONDS WEST, A DISTANCE OF 305.00 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL "B"; THENCE NORTH 6 DEGREES 6 MINUTES 29 SECONDS WEST, ALONG THE WESTERLY LINE OF SAID PARCEL "B", A DISTANCE OF 305.13 FEET; THENCE NORTH 3 DEGREES 57 MINUTES 50 SECONDS EAST, A DISTANCE OF 350 FEET, TO A POINT ON THE WESTERLY LINE OF SAID PARCEL "B",

THENCE NORTH 24 DEGREES 10 MINUTES 9 SECONDS WEST, ALONG THE WESTERLY LINE OF SAID PARCEL "B", A DISTANCE OF 410 FEET, TO THE POINT OF TERMINATION OF THE CENTERLINE OF SAID STRIP OF LAND, 20 FEET IN WIDTH, ALL IN COOK COUNTY, ILLINOIS, AS SHOWN AS DOCUMENT NUMBER 87481947 RECORDED SEPTEMBER 1, 1987.

EXCEPTING THAT PART THEREOF FALLING IN PARCEL 1 AFORESAID.

**PINS: 07-07-300-030  
07-07-300-031**

**COMMON ADDRESS: 1515 BARRINGTON ROAD  
HOFFMAN ESTATES, ILLINOIS 60172**

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## EXHIBIT B PERMITTED EXCEPTIONS

1. General real estate taxes not yet due and payable.
2. Mortgage and Security Agreement dated November 10, 1995 and recorded November 16, 1995 as Document 95796987, made by LaSalle National Trust, N.A., as successor trustee to Lyons Trust and Savings Bank, as Trustee under Trust Agreement dated June 6, 1985 and known as Trust Number 27-498-00 and Benchmark of Hoffman Estates Limited Partnership, an Illinois limited partnership, to LaSalle National Bank, a national banking association, to secure liabilities in the originally stated principal amount of \$16,123,000.00, and the terms and conditions thereof.
3. Assignment of Rents and Leases made by LaSalle National Trust, N.A., successor trustee to Lyons Trust and Savings Bank, as Trustee under Trust Agreement dated June 6, 1985 and known as Trust Number 27-498-00 and Benchmark of Hoffman Estates Limited Partnership, an Illinois limited partnership, to LaSalle National Bank, a national banking association, recorded November 16, 1995 as Document 95796988.
4. Assumption of Mortgage and of Assignment of Rents and Subordination Agreement by and between LaSalle Bank N.A. and DBF Owner II, LLC.
5. Financing Statement evidencing an indebtedness from DBF Owner II, LLC, debtor, to LaSalle Bank N.A., secured party.
6. Terms, conditions and provisions of the documents creating Parcels 2 and 3, together with the rights of the adjoining owners in and to the concurrent use of said easements.
7. Rights of way for drainage tiles, ditches, feeders and laterals.
8. Rights of the interested parties to the free and unobstructed flow of the waters of Poplar Creek which flows on or through the Southerly portion of the land, as disclosed by North Shore Survey, Ltd. dated November 15, 1999.
9. Easement in favor of Northern Illinois Gas for the installation, maintenance, repair, relocation, removal and renewal of gas mains granted by Document 87048205 on January 26, 1987, and the terms and conditions thereof.
10. Notice of requirement for storm water detention recorded August 21, 1986 as Document Number 86369253 and the terms and conditions thereof.
11. Terms and provisions of notice of requirements for storm water detention recorded October 20, 1986 as Document Number 86486179 and the terms and conditions



thereof.

12. Grant of permanent sanitary sewer easement as shown on document recorded September 1, 1987 as Document 87481947.
13. Easement for water main recorded December 7, 1983 as Document Number 26888374 and the terms and conditions thereof.
14. Terms and provisions of Recapture Agreement recorded April 22, 1991 as Document Number 91184866 and re-recorded to add Exhibits C through L on May 16, 1991 as Document Number 91234237 and the terms and conditions thereof.
15. Easement in favor of Commonwealth Edison Company, and/or its successors in interest, for pole lines, conduits and maintenance purposes granted by Document LR2798580, recorded on March 13, 1975, and the terms and conditions thereof.
16. Easement in favor of Commonwealth Edison Company and Illinois Bell Telephone Company, and/or their successors in interest, for pole lines, conduits and maintenance purposes granted by Document 23009653, recorded on March 3, 1975, and the terms and conditions thereof.
17. Easements for Public Utilities and drainage as shown on the plat of subdivision recorded February 3, 1976 as Document Number 23380141.
18. Easement in favor of Commonwealth Edison Company and Illinois Bell Telephone Company, and/or their successors in interest, for pole lines, conduits and maintenance purposes granted by Document 25195233, recorded on October 16, 1979, and the terms and conditions thereof.
19. Declaration of Easements recorded September 24, 1979 as Document Number 25160201 and the terms and conditions thereof.
20. Grant of Easement recorded December 7, 1983 as Document Number 26888368 and 26888369 from Suburban Medical Center at Hoffman Estates and the Village of Hoffman Estates and the terms and conditions thereof.
21. Plat of Easement recorded June 21, 1984 as Document Number 27139790 for water main and the terms and conditions thereof.
22. Grant of Easement as shown on document recorded December 7, 1983 as Document 26888370.
23. Grant of Easement as shown on Plat recorded May 17, 1990 as Document 90229221.
24. Grant of Easements and Agreements dated August 4, 1987 and recorded September 16, 1987 as Document Number 87506866 made between Suburban

Medical Center at Hoffman Estates, Incorporated, Midwest Cambridge Incorporated, a corporation of Illinois and Lyons Savings and Loan Association, as Trustee under Trust Agreement dated June 16, 1985 and known as Trust Number 498 and the terms and conditions thereof, as amended by First Amendment to Grants of Easement and Agreement recorded as Document 9156362.

25. The terms, provisions, conditions and limitations contained in the Lease between DBF Owner II, LLC, as lessor, and Brookdale Living Communities of Illinois - Hoffman Estates, LLC, as lessee.

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