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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1230349007 Fee: \$90.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/29/2012 11:06 AM Pg: 1 of 27

Report Mortgage Fraud
800-532-8785

Property of Cook County Clerk's Office

53003408 FRI @ 10/29/2012

The property identified as: PIN: 09-11-306-005-0000
Address:
Street: 9777 GREENWOOD
Street line 2:
City: NILES State: IL ZIP Code: 60714
Lender: CAPITAL ONE, NATIONAL ASSOCIATION
Borrower: NILES NURSING REALTY LLC

Loan / Mortgage Amount: \$16,500,000.00

This property is located within the program area and is exempt from the requirements of 765 LCS 77/70 et seq. because it is commercial property.

... ORIGINAL DOCUMENT.

... ORIGINAL TITLE

Certificate number: F4C5B596-A2CE-4088-B2F4-A018E226C216

Execution date: 08/24/2012

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RECORDING REQUESTED BY AND)
 WHEN RECORDED MAIL TO:)
 Katten Muchin Rosenman LLP)
 525 West Monroe Street)
 Chicago, Illinois 60661)
 Attn.: Jeffrey L. Elegant)

Space Above for Recorder's Use

MORTGAGE AND SECURITY AGREEMENT

FROM NILES NURSING REALTY LLC
 TO CAPITAL ONE, NATIONAL ASSOCIATION

August 24, 2012

Property of Cook County Clerk's Office

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("**Mortgage**") is made as of the 24 day of August, 2012, by NILES NURSING REALTY LLC, an Illinois limited liability company with a mailing address at 9777 North Greenwood Avenue, Niles, Illinois 60714 (hereinafter called the "**Borrower**"), to or for the benefit of **CAPITAL ONE, NATIONAL ASSOCIATION**, with an address of 4445 Willard Avenue 6th Floor, Chevy Chase, Maryland 20815 (hereinafter called the "**Lender**").

RECITALS:

WHEREAS, pursuant to a Term Loan Agreement of even date herewith by and between Borrower and Lender (the "**Loan Agreement**"), Lender has made a loan in the amount of SIXTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$16,500,000) (the "**Loan**") to Borrower, which Loan is evidenced by a certain promissory note of even date herewith in the original amount of \$16,500,000 (the "**Note**") bearing interest at the per annum rate equal to the LIBOR Rate (as defined in the Loan Agreement), plus 4.50%; and

WHEREAS, a condition precedent to Lender's making the Loan to Borrower is the execution and delivery of this Mortgage

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

SECTION 1 GRANT

Borrower hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Lender, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as, the "**Property**"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

THE REAL ESTATE owned by Lender located in Cook County, Illinois and legally described on Exhibit A attached hereto and made a part hereof (the "**Real Estate**").

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Borrower and located on, or used in connection with the Real Estate or the improvements thereon, 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 of Borrower 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 by Borrower or on its behalf ("**Improvements**");

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TOGETHER WITH all easements, rights of way, gores of real estate, 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 Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Borrower of, in and to the same;

TOGETHER WITH all rents, revenues, issues, profits, proceeds, income, royalties, accounts, accounts receivable, escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Property and/or the businesses and operations conducted by Borrower thereon, to be applied against the Obligations (hereinafter defined);

TOGETHER WITH all interest of Borrower in all leases now or hereafter of the Property, whether written or oral ("**Leases**"), together with all security therefor and all monies payable thereunder;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Borrower and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Borrower and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Obligations; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code of the State of Illinois as in effect from time to time ("**Code**"), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Lender, as a secured party, and Borrower, as Debtor, all in accordance with the Code; and

TOGETHER WITH all of Borrower's interests in "**general intangibles**" (as defined in the Code) now owned or hereafter acquired and related to the Property, including, without limitation, all of Borrower's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Borrower is or may become a party and which relate to the Property; (ii) all obligations and indebtedness owed to Borrower thereunder; (iii) all intellectual property related to the Property; and (iv) all choses in action and causes of action relating to the Property;

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TOGETHER WITH all of Borrower's "accounts" (as defined in the Code) now owned or hereafter created or acquired as relate to the Property, including, without limitation, all of the following now owned or hereafter created or acquired by Borrower: (i) accounts receivable, contract rights, book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Borrower's rights in, to and under all purchase orders for goods, services or other property; (iii) the Borrower's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due to become due to the Borrower under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Borrower); and (v) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Borrower with respect to the Property;

TOGETHER WITH all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Property or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Property or proceeds of any sale, option or contract to sell the Property or any portion thereof.

TO HAVE AND TO HOLD the Property, unto Lender, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Property after the occurrence of any Event of Default; Borrower hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, prepayment premium (if any), exit fee (if any), interest rate swap or hedge expenses (if any), reimbursement obligations, fees and expenses for letters of credit issued by Lender for the benefit of Borrower, if any, and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents (as defined in the Loan Agreement), any interest rate swap or hedge agreement now or hereafter entered into between Borrower and Lender and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) all other Obligations, (iii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower or any other obligor to or benefiting Lender which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iv) the reimbursement to Lender of any and all sums incurred, expended or advanced by Lender pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the other Loan Documents, with interest thereon as provided herein or therein.

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SECTION 2 DEFINITIONS

The following terms as used herein shall have the following meanings:

“**Borrower**” shall have the meaning assigned to it in the recitals to this Mortgage.

“**Building Service Equipment**” shall mean all apparatus, fixtures and articles of personal property owned by Borrower now or hereafter attached to or used or procured for use in connection with the operation or maintenance of any building, structure or other improvement located on or included in the Property, including, but without limiting the generality of the foregoing, all engines, furnaces, boilers, stokers, pumps, heaters, tanks, dynamos, motors, generators, switchboards, electrical equipment, heating, plumbing, lifting and ventilating apparatus, air-cooling and air-conditioning apparatus, gas and electrical fixtures, elevators, escalators, fittings, and machinery and all other equipment of every kind and description, used or procured for use in the operation of the building standing on the Property (except apparatus, fixtures or articles of personal property belonging to lessees or other occupants of such building or to persons other than Borrower, unless the same be abandoned by any such lessee or other occupant or person), together with any and all replacements thereof and additions thereto.

“**CERCLA**” shall have the meaning assigned to it in Section 3.6(a) hereof.

“**Disposal**” shall have the meaning assigned to it in Section 4.6 hereof.

“**Environmental Laws**” shall have the meaning assigned to it in Section 3.6(a) hereof.

“**EPA**” shall have the meaning assigned to it in Section 3.6(b) hereof.

“**Event of Default**” shall mean (a) any Event of Default under the Loan Agreement, the Note or the other Loan Documents, (b) any default in the payment or performance of the obligations of Borrower hereunder, or (c) any representation or warranty of Borrower hereunder proving to be untrue in any material respect.

“**Governing State**” shall have the meaning assigned to it in Section 6.8 hereof.

“**Hazardous Materials**” shall have the meaning assigned to it in Section 3.6(b) hereof.

“**Lender**” shall have the meaning assigned to it in the recitals to this Mortgage.

“**Loan**” shall have the meaning assigned to it in the recitals to this Mortgage.

“**Loan Agreement**” shall have the meaning assigned to it in the recitals to this Mortgage.

“**Loan Documents**” shall have the meaning assigned to it in the Loan Agreement.

“**Mortgage**” shall have the meaning assigned to it in the recitals to this Mortgage.

“**Note**” shall have the meaning assigned to it in the recitals to this Mortgage.

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“**Notice**” shall have the meaning assigned to it in Section 6.1 hereof.

“**Obligations**” shall mean all indebtedness, liabilities, obligations, covenants and agreements of Borrower to Lender now existing or hereafter arising or incurred under the Loan Agreement, the Note, this Mortgage, or the other Loan Documents, whether individually or collectively, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising thereunder or hereunder by contract, operation of law or otherwise and whether before or after any judgment relating to any of the foregoing.

“**PDF**” shall have the meaning assigned to it in Section 6.16 hereof.

“**Permitted Encumbrances**” shall mean the encumbrances listed on Exhibit C attached hereto and incorporated herein by reference as if fully set out herein.

“**Personalty**” shall have the meaning assigned to it in Section 4.16 hereof.

“**Property**” shall have the meaning assigned to it in Section 1 hereof.

“**Property Income**” shall mean all rents, income, profits, security deposits and other benefits to which Borrower may now or hereafter be entitled from any lease, tenancy or rights of use of all or any part of the Property and/or the income generated from the business operations conducted at or from the Property.

“**RCRA**” shall have the meaning assigned to it in Section 3.6(a) hereof.

“**Release**” shall have the meaning assigned to it in Section 4.6 hereof.

“**Spill**” shall have the meaning assigned to it in Section 4.5 hereof.

SECTION 3 REPRESENTATIONS AND WARRANTIES

Borrower hereby represents, covenants and warrants to Lender as follows:

Section 3.1. Title to Property. Borrower warrants it has good, fee simple title to the Property subject only to the Permitted Encumbrances and that it shall warrant, defend and preserve such title and the rights granted by this Mortgage with respect thereto against all claims of all persons or entities.

Section 3.2. Authority; No Encumbrances. The Property is now free and clear of all encumbrances whatsoever except Permitted Encumbrances, and Borrower has good right and lawful authority to mortgage and convey the same in the manner and form hereby mortgaged and conveyed.

Section 3.3. No Conflicts. The execution and delivery of this Mortgage does not, and the performance and observance of the terms hereof will not, contravene any provision of existing law, ordinance, rule, regulation or order of any Federal, state or local governmental

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body, instrumentality or agency, and will not conflict with or result in any breach of the terms, conditions or provisions of, or constitute a default under or result in or permit the creation or imposition of any charge or encumbrance upon any of the properties or assets of Borrower pursuant to, any indenture, mortgage or other agreement or instrument to which Borrower is a party or by which its properties or assets are bound.

Section 3.4. Governmental Filings. Other than the recording of this Mortgage and the filing of uniform commercial code financing statements with the appropriate recording and filing offices in the State of Illinois, no approval, authorization or other action by, or filing with, any Federal, state or local body, instrumentality or agency, is required under existing law in connection with the execution and delivery by Borrower of this Mortgage.

Section 3.5. No Leases. Except as set forth in Exhibit B attached hereto and made a part hereof, there are presently in effect no leases of the Property or any part thereof.

Section 3.6. Environmental Compliance. Borrower has taken all necessary steps to investigate the past and present condition and usage of the Property and the operations conducted thereon and, based upon such diligent investigation, makes the following representations and warranties.

(a) None of Borrower or any operator of the Property, or any operations thereon is in violation, or alleged violation, of any judgment, decree, order, law, license, rule or regulation pertaining to environmental matters, including without limitation, those arising under the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), the Resource Conservation and Recovery Act ("**RCRA**"), the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Substances Transportation Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act, the Superfund Amendments and Reauthorization Act, any state super-lien and environmental clean-up statutes (including with respect to Toxic Mold), or any local law requiring related permits and licenses and all amendments to and regulations in respect of the foregoing laws (hereinafter "**Environmental Laws**"), which violation involves the Property or would have a material adverse effect on the environment or the business, assets or financial condition of Borrower.

(b) Borrower has not received notice from any third party including, without limitation, any Federal, state or local governmental authority, (i) that it has been identified by the United States Environmental Protection Agency ("**EPA**") as a potentially responsible party under CERCLA with respect to a site listed on the National Priorities List, 40 C.F.R. Part 300 Appendix B (1986); (ii) that any hazardous waste, as defined by 42 U.S.C. Section 9601(5), any hazardous substances as defined by 42 U.S.C. Section 9601(14), any pollutant or contaminant as defined by 42 U.S.C. Section 9601(33) or any toxic substances, oil or hazardous materials or other chemicals or substances regulated by any Environmental Laws ("**Hazardous Materials**") which it has generated, transported or disposed of have been found at any site at which a Federal, state or local agency or other third party has conducted or has ordered that Borrower conduct a remedial investigation, removal or other response action pursuant to any Environmental

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Law; or (iii) that it is or shall be a named party to any claim, action, cause of action, complaint, or legal or administrative proceeding (in each case, contingent or otherwise) arising out of any third party's incurrance of costs, expenses, losses or damages of any kind whatsoever in connection with the release of Hazardous Materials.

(c) (i) No portion of the Property has been used for the handling, processing, storage or disposal of Hazardous Materials except in accordance with applicable Environmental Laws; and no underground tank or other underground storage receptacle for Hazardous Materials is located on any portion of the Property; (ii) in the course of any activities conducted by Borrower or the operators of its properties, no Hazardous Materials have been generated or are being used on the Property, except in accordance with applicable Environmental Laws; (iii) there has been no past or present Release or threatened Release of Hazardous Materials on, upon, into or from the Property, which Release would have a material adverse effect on the value of any of the Property or adjacent properties or the environment; (iv) to the best of Borrower's knowledge, there have been no Releases on, upon, from or into any real property in the vicinity of any of the Property which, through soil or groundwater contamination, may have come to be located on, and which would have a material adverse effect on the value of, the Property; and (v) any Hazardous Materials that have been generated on any of the Property have been transported off-site only by carriers having an identification number issued by the EPA, treated or disposed of only by treatment or disposal facilities maintaining valid permits as required under applicable Environmental Laws, which transporters and facilities have been and are, to the best of Borrower's knowledge, operating in compliance with such permits and applicable Environmental Laws.

(d) None of the Property is or shall be subject to any applicable environmental clean-up responsibility law or environmental restrictive transfer law or regulation, by virtue of the transactions set forth herein and contemplated hereby.

(e) Borrower covenants and agrees that it will indemnify and hold Lender harmless from and against any and all expense, damage, loss or liability incurred by Lender (including, without limitation, all costs of legal representation incurred by Lender in connection with enforcing the provisions hereof, or otherwise) arising from the application of any law, including any so-called "Super Fund," "Transfer Act" or "Super Lien" legislation, relating to the presence of Hazardous Materials on the Property, whether such legislation is Federal, state or local in nature. It is expressly acknowledged by Borrower that, notwithstanding anything to the contrary set forth herein, this covenant of indemnification shall survive any foreclosure of the lien and security interest of this Mortgage or the discharge of this Mortgage and shall inure to the benefit of Lender, its successors and assigns.

Section 3.7. Absence of Litigation. There are no actions, suits, proceedings or investigations, including, without limitation, condemnation and eminent domain proceedings, pending or, to the best of Borrower's knowledge, threatened, against or affecting the Property, or which may involve or affect the validity of this Mortgage, and Borrower is not in default with respect to any order, writ, injunction, decree or demand of any Federal, state or local

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governmental body, instrumentality or agency affecting the Property or the use and occupancy thereof.

Section 3.8. Execution, Delivery and Enforceability. Borrower is duly authorized to make and enter into this Mortgage and to carry out the transactions contemplated by the Loan Agreement, the Note and the other Loan Documents. This Mortgage has been duly executed and delivered by Borrower and is the legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, subject only to the effect of any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and the discretionary nature of specific performance and other equitable remedies.

Section 3.9. Compliance with Law. The Property is in compliance with all applicable Federal, state and local laws, rules, ordinances and regulations, including but not limited to those governing zoning, land use, subdivision control, health, safety, fire protection and protection of the environment.

Section 3.10. Condition of the Property. The Property is in good order and repair and is free of all defects other than such defects as have been previously disclosed to and are acceptable to Lender. There is no real or personal property necessarily or customarily used to operate the Property as an integrated economic unit, except as is owned in fee simple by Borrower and granted to Lender in the granting clauses hereof. There is direct and adequate ingress, egress access to and from the Property to one or more public highways and adequate connections to all customary public utilities, including, but not limited to, electricity, natural gas, telephone and cable television from public ways, or utility-owned rights of way, abutting the Property.

SECTION 4 CERTAIN COVENANTS AND CONDITIONS

Borrower covenants and agrees as follows:

Section 4.1. Governmental Charges. Borrower shall pay, before the same become delinquent all taxes, charges, sewer use fees, water rates and assessments of every name and nature, whether or not assessed against Borrower, if applicable or related to the Property, or any interest therein, or applicable or related to any of the Obligations, which, if unpaid, might by law become a lien or charge upon all or any part of the Property; provided, however, that so long as no distraint, foreclosure sale or other levy upon or transfer with respect to the Property or any part thereof shall have been effected or threatened, Borrower shall not be required to pay any such taxes, charges, fees, rates and assessments by reason of this Section 4.1 if (a) the amount, applicability or validity thereof is currently being contested by Borrower in good faith by appropriate legal proceedings, (b) Borrower shall have set aside on its books reserves (segregated to the extent required by sound accounting principles and practices) reasonably deemed by Lender to be adequate with respect thereto, and (c) Borrower shall have provided to Lender a bond or other security of such nature and in such amount as Lender deems sufficient as security for payment thereof.

Section 4.2. Provision For Payment of Governmental Charges and Other Obligations. To assure the payment of all taxes, charges, sewer use fees, water rates, ground rents and

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assessments of every name and nature, or any other obligations which may have or acquire priority over this Mortgage, and which are assessed or payable with reference to the Property, Borrower, if so requested by Lender, shall deposit with Lender, on the first day of each month, a sum determined by Lender to be sufficient to provide, in the aggregate, a fund adequate to pay any such amounts at least ten (10) days before the same become delinquent; and whenever Lender determines sums accumulated under the provisions of this Section 4.2 to be insufficient to meet the obligation for which such deposits were made, Borrower shall pay, on the demand of Lender, any amount required to cover the deficiency therein. Every such deposit may, at the option of Lender, be applied directly against the obligation with reference to which it was made, or, to the fullest extent permissible according to law, any other obligation of Borrower secured hereby. Such deposits may, to the fullest extent permitted by law, be commingled with other assets of Lender and, in the discretion of Lender, invested by Lender for its own account, without any obligation to pay income from such investment, or interest on such deposits, to Borrower, or to account to Borrower for such income in any manner.

Section 4.3. Maintenance of Property; Alterations. Borrower shall keep and maintain the Property in as good repair and condition as the same now is or may hereafter be put (ordinary wear and tear excepted), damage from casualty expressly not excepted, shall make all such needful and proper repairs, replacements, additions and improvements thereto as shall be necessary for the proper conduct of its business thereon, and shall not permit or commit waste on the Property. Borrower will make or cause to be made, as and when the same shall become necessary, all structural and non-structural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen repairs, renewals and replacements necessary to that end. Borrower shall not permit removal or alteration of anything which constitutes a part of the Property without the consent of Lender. Borrower shall permit Lender to enter the Property at any reasonable time to determine whether Borrower is in compliance with its obligations under this Mortgage.

Section 4.4. Insurance. Borrower agrees, at Borrower's sole cost and expense, to keep the Property insured at all times throughout the term of this Mortgage with policies of insurance as required by the Loan Agreement.

Section 4.5. Casualties and Takings. All proceeds of any property or casualty insurance or awards of damages on account of any taking or condemnation for public use or injury to the Property shall be paid in accordance with the Loan Agreement.

Section 4.6. Hazardous Materials; Asbestos.

Borrower further covenants and agrees that it will:

- (a) not store (except in compliance with any and all Environmental Laws), Dispose of, Spill, Release or allow the Release of any Hazardous Materials on the Property;
- (b) either directly nor indirectly transport or arrange for the transport of any Hazardous Materials (except in compliance with all Federal, state or local laws, rules, ordinances and regulations pertaining thereto);

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(c) in the event of any change in the laws governing the assessment, Spill, Release or removal of Hazardous Materials, which change would lead a prudent lender to require additional testing to avail itself of any statutory insurance or limited liability, take all such action (including, without limitation, the conducting of engineering tests at the sole expense of Borrower) to confirm that no Hazardous Materials are or ever were Spilled, Released or Disposed of on the Property;

(d) provide Lender with written notice:

(i) upon Borrower's obtaining knowledge of any potential or known Spill, Release, or threat of Release, of any Hazardous Materials at or from the Property;

(ii) upon Borrower's receipt of any notice to such effect from any Federal, state or local governmental body, instrumental agency; or

(iii) upon Borrower's obtaining knowledge that any expense or loss has been incurred by such governmental authority in connection with the assessment, containment, removal or remediation of any Hazardous Materials for which expense or loss Borrower may be liable or for which expense a lien may be imposed on the Property, and

(e) if any Spill, Release or Disposal of Hazardous Materials shall occur or shall have occurred on the Property, cause the prompt containment and removal of such Hazardous Materials and remediation of the Property in full compliance with all applicable Federal, state or local laws, rules, ordinances and regulations.

The terms "Spill" (or "Spilled") and "Release" (or "Released") shall have the meaning specified thereof in CERCLA and the term "Disposal" (or "Disposed") shall have the meaning specified in RCRA; provided, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply as of the effective date of such amendment and provided further, to the extent that the laws of the state where the Property is located establish a meaning for "Spill", "Release" or "Disposal" which is broader than specified in either CERCLA or RCRA, such broader meaning shall apply; and provided further, that in the cases of friable asbestos or toxic levels of lead in paint, plaster or other accessible materials, "Spill" and "Release" shall include the presence of such substances anywhere on the Property.

Section 4.7. Environmental Assessments. At any time after an Event of Default shall have occurred hereunder, or, whether or not an Event of Default shall have occurred, at any time after Lender shall receive notice of a Spill, Release or threatened Release of Hazardous Materials from Borrower, or shall have received notice from any other source deemed reliable by Lender that a Spill or Release of Hazardous Materials may have occurred, Lender may at its election after five (5) days prior notice to Borrower obtain one or more environmental assessments of the Property prepared by a geohydrologist, an independent engineer or other qualified consultant or expert approved by Lender evaluating or confirming (i) whether any Hazardous Materials are present in the soil or water at or adjacent to the Property, and (ii) whether the use and operation

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of the Property comply with all applicable Environmental Laws relating to air quality, environmental control, release of oil, hazardous materials, hazardous wastes and hazardous substances, and any and all other applicable environmental laws. Environmental assessments may include detailed visual inspections of the Property including, without limitation, any and all storage areas, storage tanks, drains, dry wells and leaching areas, and the taking of soil samples, surface water samples and ground water samples, as well as such other investigations or analyses as are necessary or appropriate for a complete determination of the compliance of the Property and the use and operation thereof with all applicable Environmental Laws. All such environmental assessments shall be at the sole cost and expense of Borrower.

Section 4.8. Notice of Condemnation. Borrower, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation or requisition of the Property or any portion thereof, shall notify Lender of the pendency of such proceeding. Lender may participate in such proceeding, and Borrower from time to time shall deliver to Lender all instruments requested by Lender to permit such participation.

Section 4.9. Leases; Assignments; Subordination. Borrower shall not lease the Property or any part thereof without the prior written consent of Lender except as expressly permitted in the Loan Agreement. If the Loan Agreement or the Collateral Assignment shall so permit or Lender shall consent and Borrower shall enter into a lease, Borrower shall faithfully keep, observe and satisfy all the obligations on the part of the lessor to be kept, performed and satisfied under every lease from time to time in force with reference to the Property, and shall not alter or terminate any such lease, or any guarantee of such lease, except in the ordinary course of business, or accept any rentals for more than one (1) month in advance. Borrower shall submit to Lender for its review and prior written approval all draft agreements, related materials and all other information relating to all proposed leases of the Property or any portion thereof, all proposed lease modifications relating to the leases described in Exhibit B hereto, and all proposed renewals of such leases. Borrower hereby assigns to Lender all rents and profits under any and all leases of the Property; provided, however, that Borrower shall be entitled to retain such rents and profits until an Event of Default shall have occurred. At any time on notice from Lender, Borrower shall submit to Lender for examination all such leases and on the demand of Lender, shall execute and deliver a separate instrument collaterally assigning any or all such leases, or the rents and profits thereof, in form satisfactory to Lender. Lender shall have the right, by the execution of suitable written instruments from time to time, to subordinate this Mortgage, and the rights of Lender hereunder, to any lease or leases from time to time in force with reference to the Property, and, on the execution of any such instrument, this Mortgage shall be subordinate to the lease for which such subordination is applicable with the same force and effect as if such lease had been executed and delivered, and a notice thereof recorded to the extent required to give notice to third persons, prior to the execution, delivery and recording of this Mortgage. Nothing contained in this Section 4.9 is intended, nor shall it be deemed, to constitute consent by Lender to a subordination of the lien of this Mortgage.

Section 4.10. Prior Mortgages. If this Mortgage, by its terms, is now, or at any time hereafter, becomes subject or subordinate to a prior mortgage, Borrower shall fully perform its obligations under such prior mortgage and shall not, without the consent of Lender, agree to the modification, amendment or extension of the terms or conditions of such prior mortgage.

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Nothing contained in this Section 4.10 is intended, nor shall it be deemed, to constitute consent by Lender to a subordination of the lien of this Mortgage.

Section 4.11. Encumbrances. Borrower shall not create or permit to be created or permit to exist any encumbrance on the Property (other than a lien for property taxes not yet due and payable and the Permitted Encumbrances) even if such encumbrance is inferior to this Mortgage, without the prior express written consent of Lender.

Section 4.12. Transfers of Ownership. Borrower shall not sell or permit any transfer or other disposition, by operation of law or otherwise, of legal or equitable title to or interest in the Property, or any part thereof (including, without limitation, any sale, transfer or disposition of any corporate, partnership or other legal or beneficial interest in Borrower), without the prior express written consent of Lender, which consent may be withheld in Lender's sole discretion for any reason whatsoever.

Section 4.13. Expenses. Borrower shall pay when due all fees and charges (including reasonable attorneys' fees) incurred by Lender in connection with the transactions evidenced by the Obligations and secured by this Mortgage, the insurance of the security represented by this Mortgage, protecting or sustaining the lien of this Mortgage and the enforcement of the Obligations and this Mortgage, all either before or after obtaining judgment of foreclosure of this Mortgage or judgment in or with respect to the Obligations, including, without limitation, all filing, registration, recording, search, appraisal and information fees, all title insurance premiums, all transfer taxes and expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the Obligations, and all Federal, state and local taxes, duties, stamps, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and the instruments evidencing the Obligations. Such fees and charges shall be secured by the lien of this Mortgage and shall accrue interest at the rate set forth in the Loan Agreement.

Section 4.14. Priority of Lien: After-Acquired Property. This Mortgage is and will be maintained as a valid mortgage lien on the Property subject only to the Permitted Encumbrances. All property of every kind acquired by Borrower after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by Borrower, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien of this Mortgage. Any real property or easement across real property adjoining or adjacent to the Property which is used for access to, providing utility service to or is granted in lieu of a cash award for a condemnation of any portion of the Property now existing or hereafter acquired shall be subject to the lien of this Mortgage. Borrower will do, execute, acknowledge and deliver all and every such further conveyances, mortgages, and assurances as Lender shall reasonably require for accomplishing the purposes of this Mortgage. If any action or proceeding shall be instituted to recover possession of the Property or for the foreclosure of any other mortgage or for any other purpose affecting the Property or this Mortgage, Borrower will immediately, upon service thereof on or by Borrower, deliver to Lender a true copy of each petition, summons, complaint, notice, motion, order to show cause, and all other process, pleadings and papers, however designated, served in any such action or proceeding.

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Section 4.15. Waiver and Modification. Whether or not for additional interest or other consideration paid or payable to Lender, no forbearance on the part of Lender or extension of the time for the payment of the whole or any part of the Obligations secured hereby, or any other indulgence given by Lender to Borrower or to any other party claiming any interest in or to the Property, shall operate to release or in any manner affect the original liability of Borrower, or the priority of this Mortgage or to limit, prejudice or impair any right of Lender, including, without limitation, the right to realize upon the security, or any part thereof, for the Obligations secured hereby or any of them, notice of any such extension, forbearance or indulgence being hereby waived by Borrower and all those claiming by, through or under Borrower. No consent or waiver, express or implied, by Lender to or of any default by Borrower shall be construed as a consent or waiver to or of any further default in the same or any other term, condition, covenant or provision of this Mortgage or of the Obligations secured hereby. Borrower waives presentment, demand, notice, protest, notice of acceptance of this Mortgage, notice of loans made, credit extended or other collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. With respect both to the Obligations and the Property, Borrower assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of the Property, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payments thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as Lender may deem advisable. Lender shall have no duty as to the collection or protection of the Property or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining thereto beyond the safe custody thereof. Lender may exercise its rights with respect to the Property without resorting or regard to other collateral or sources of reimbursement for liability. Lender shall not be deemed to have waived any of its rights upon or under the Obligations or the Property unless such waiver be in writing and signed by Lender.

Section 4.16. Fixtures and Equipment; Financing Statement. This Mortgage constitutes a security agreement under the Uniform Commercial Code as enacted in the State of Illinois, and Borrower hereby grants to Lender to secure the payment and performance of the Obligations and also to secure the performance of all agreements and covenants herein contained, a security interest in all fixtures, Building Service Equipment and any other property (hereinafter referred to as the "**Personalty**") included in the Property, now owned or hereafter acquired by Borrower, which might otherwise be deemed "personal property" (and all accessions thereto and the proceeds thereof). Borrower covenants and agrees that, upon the subsequent acquisition of fixtures, Personalty or Building Service Equipment, it will provide to Lender such further assurances as may be required by Lender to establish Lender's first and prior security interest in such fixtures, Personalty and Building Service Equipment. **IT IS INTENDED BY THE GRANTOR AND THE GRANTEE THAT THIS MORTGAGE BE EFFECTIVE AS A FINANCING STATEMENT FILED WITH THE REAL ESTATE RECORDS AS A FIXTURE FILING.** Borrower shall execute, deliver and cause to be recorded and filed from time to time with all necessary public offices, at Borrower's sole cost and expense, continuation statements and such other instruments as will maintain Lender's priority of security in all fixtures, Personalty and Building Service Equipment. If Borrower shall fail to furnish any such financing and continuation statements within ten (10) days after their request by Lender, then, pursuant to the provisions of the Uniform Commercial Code, Borrower hereby authorizes Lender, without signature of Borrower, to execute and file any such financing and continuation statements. The

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filing of any financing or continuation statements in the office of the Secretary of the State shall not be construed as in any way impairing the right of Lender to proceed against fixtures, Personalty or Building Service Equipment as real property.

Section 4.17. Zoning Changes; Alterations of the Property. Borrower shall submit to Lender for its prior written approval all applications and other information relating to any proposed zoning change, variance or other action with respect to the use of the Property or any portion thereof. Borrower shall also submit to Lender for its prior written approval complete plans and specifications for any additions or renovations of buildings or other improvements on the Property.

Section 4.18. Change in Management. Borrower shall submit to Lender for its review and prior written approval all information relating to any proposed change in the management of the Property or the business conducted thereon.

SECTION 5 DEFAULT AND REMEDIES

Section 5.1. Default; Acceleration of Obligations. If an Event of Default shall occur, then Lender may exercise the remedies provided under this Mortgage, under the Loan Agreement, under the Note, under the other Loan Documents or under the laws of the State of Illinois or any one or more of such remedies.

Section 5.2. Remedies Cumulative. No remedy herein conferred on Lender is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing.

Section 5.3. Right of Mortgagee to Cure an Event of Default. If an Event of Default shall occur, Lender shall have the right, but without any obligation so to do, to cure such default for the account of Borrower and to make any payment or take any action necessary to effect such cure. Without limiting the generality of the foregoing, Borrower hereby authorizes Lender to pay all taxes, sewer use fees, water rates and assessments, with interest, costs and charges accrued thereon, which may at any time be a lien upon the Property, or any part thereof; to pay the premiums for any insurance required hereunder; to incur and pay reasonable expenses in protecting its rights hereunder and the security hereby granted; and to pay any balance due under any security agreement on any fixtures and equipment included as a part of the Property; and the payment of all amounts so incurred shall be secured hereby as fully and effectually as any other obligation of Borrower secured hereby. If Lender shall make any payment or take action in accordance with this Section 5.3, Lender will give to Borrower written notice of the making of any such payment or the taking of any such action. In any such event, Lender and any person designated by Lender shall have, and is hereby granted, the right to enter upon the Property at reasonable times and from any time and from time to time for the purpose of taking any such action, and all monies expended by Lender in connection therewith (including, but not limited to, reasonable legal expenses and disbursements), together with interest thereon at the Default Rate as specified in the Loan Agreement (or the highest rate permitted by law, whichever shall be less), from the date of each such expenditure, shall be paid by Borrower to Lender forthwith upon demand by Lender, and shall be secured by this Mortgage, and Lender shall have, in

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addition to any other right or remedy of Lender, the same rights and remedies in the event of non-payment of any such sums by Borrower as in the case of a default by Borrower in the payment of any installment of principal or interest due and payable under the Loan Agreement and the Note.

Section 5.4. Foreclosure. Without limiting any of Lender's rights set forth in Section 5.5 hereof, if an Event of Default shall occur, Lender may foreclose this Mortgage and exercise its rights as a secured party for all or any portion of the Obligations which is then due and payable, subject to the continuing lien of this Mortgage for the balance not then due and payable.

Section 5.5. Possession of Property; Appointment of Receiver.

(a) Without limiting any of Lender's rights set forth in Section 5.4 hereof, if an Event of Default shall occur Lender may, at its option: (i) enter upon and take possession and control of the Property and the Property Income with those rights and powers more particularly set forth in Section 5.5(b) hereof; (ii) make application to a court of competent jurisdiction for and obtain the immediate ex parte appointment of a receiver authorized to immediately enter upon and take possession and control of the Property and the Property Income with those rights and powers more particularly set forth in Section 5.5 (b) hereof; and (iii) without taking possession and control of the Property, immediately (with or without commencing any legal action or proceeding in any court of competent jurisdiction) collect directly all Property Income in the place and stead of Borrower with full rights and powers to notify all parties liable to make payments of Property Income to make said payments directly to Lender or its agents, and Lender or its agents shall have the further power and authority to sue for or otherwise collect and receive all Property Income.

(b) In the event Lender or a receiver enters upon and takes possession and control of the Property and/or the Property Income pursuant to Section 5.5(a) hereof, said person or entity shall, in addition to such other rights and powers as may subsequently be authorized, have the right and power to (i) operate, manage and control the Property and exercise all the rights and powers of Borrower in its name or otherwise with respect to the same; (ii) make all necessary and proper maintenance, repairs, replacements, and improvements to the Property; (iii) collect and receive all Property Income; and (iv) enforce all terms of existing contracts pertaining to the Property and enter into such new contracts as Lender or the receiver may determine necessary in their sole discretion.

(c) All Property Income collected by Lender, Lender's agent or a receiver, pursuant to Section 5.5(a) hereof, shall be applied in such order of priority as Lender may determine in its sole discretion to (i) interest and principal due on the Obligations; (ii) taxes, assessments and insurance premiums due with respect to the Property and/or the business operations conducted from the Property; (iii) all costs and expenses of operating, maintaining, repairing and improving the Property; and (iv) the compensation, salaries, expenses and disbursements of any agents, employees, attorneys or other representatives of Lender, Lender's agent or the receiver in connection with the possession, control and/or operation of the Property and the business operations conducted therefrom.

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(d) Lender, its agents, or any receiver acting pursuant to Section 5.5(a) hereof shall in no event be liable or accountable for more monies than actually are received from the Property during the period which Lender, its agent or any receiver actually is in possession and control of the Property. Neither Lender, its agents or any receiver shall be liable or accountable in any manner for the failure to collect Property Income for any reason whatsoever.

(e) All costs, expenses and liabilities of every character incurred by Lender in managing, operating and maintaining the Property, not paid from Property Income as herein above provided, shall constitute advances by Lender pursuant to Section 5.3.

(f) In the event of foreclosure, Lender, its agent or any receiver acting pursuant to Section 5.5(a) hereof may, if a deficiency exists, remain in possession of the Property until (i) the foreclosure sale; (ii) the redemption of the Property; or (iii) the expiration of any redemption period of the United States of America extending subsequent to the foreclosure sale. Lender, its agents or the receiver shall incur no liability for, nor shall Borrower assert any claim or setoff as a result of, any action taken while Lender, its agent or a receiver is in possession of the Property.

Section 5.6. Uniform Commercial Code. If the provisions of the Uniform Commercial Code as enacted in the State of Illinois are applicable to any property or security given to secure the indebtedness secured hereby which is sold in combination with or as a part of the Property, or any part thereof, at one or more foreclosure sales, any notice required under such provisions shall be fully satisfied by any notice given in connection with such foreclosure sales of the Property or any part thereof.

Section 5.7. Rights Cumulative. Each right, power and remedy conferred upon Lender by this Mortgage, the Loan Agreement, the Note and the other Loan Documents, and conferred by law or in equity, is cumulative and in addition to every other right, power and remedy herein or therein set forth or otherwise so existing, may be exercised from time to time, as often, and in such order, as may be deemed expedient by Lender, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of, or discontinuance by, Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. To constitute a waiver, there must be a writing signed by an officer of Lender and directed to Borrower, specifying the waiver.

No delay or omission of Lender to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy nor shall it be construed to be a waiver of any such default or an acquiescence therein, and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

In case Lender shall have proceeded to enforce any right or remedy under this Mortgage, the Loan Agreement, the Note or the other Loan Documents by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have

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been determined adversely to Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken. In the event of a breach or default or an Event of Default under this Mortgage, the Loan Agreement, the Note or other Loan Documents, Borrower agrees to pay and to indemnify and hold harmless Lender for all reasonable expenses, attorneys' fees, taxes and other court costs occasioned by such breach or default.

Section 5.8. No Merger. In the event Lender shall acquire title to the Property by conveyance from Borrower or as a result of the foreclosure of any other mortgage which Lender at any time holds with respect to the Property, this Mortgage shall not merge in the fee of the Property but shall remain and continue as an existing and enforceable lien for the Obligations secured hereby until the same shall be released of record by Lender in writing.

Section 5.9. Compliance with Illinois Mortgage Foreclosure Law.

(a) If any provision in this Mortgage shall be inconsistent with any provisions of the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5115-1101 et seq., Illinois Compiled Statutes (as the same may be amended from time to time the "Act")), the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 5.5 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Obligations and/or by the judgment of foreclosure.

SECTION 6 MISCELLANEOUS

Section 6.1. Notices. All notices, consents, approvals and requests required or permitted under this Agreement or any other Loan Document (a "Notice") shall be given in writing and shall be effective for all purposes if either hand delivered with receipt acknowledged, or by a nationally recognized overnight delivery service (such as Federal Express), or by certified or registered United States mail, return receipt requested, postage prepaid, or, with respect to routine or administrative notices (but specifically excluding notices of Default, Events of Default or acceleration of the Loan) by electronic mail, in each case addressed as follows (or

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to such other address or Person as a party shall designate from time to time by notice to the other party):

If to Borrower: Niles Nursing Realty LLC, 1230 Ridgedale Road, South Bend, Indiana 46614 Attn: Moishe Gubin (cateremco@yahoo.com),

with a copy to: David Gross, Esq., 240 Fencil Lane, Hillside, Illinois 60162, (david.gross@infinityhem.com)

If to Lender: Capital One, National Association, Commercial & Specialty Finance, 4445 Willard Ave., 6th Floor, Chevy Chase, MD 20815 Attn: Anthony Romero (anthony.romero@capitalone.com) (Facsimile () -).

with a copy to: Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois, 60661 Attn: Jeffrey L. Elegant (jeff.elegant@kattenlaw.com) (Facsimile (312) 577-4676).

A Notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of overnight delivery, upon the first attempted delivery on a Business Day; or, in the case of electronic mail, at the time of delivery.

Section 6.2. **COMMERCIAL WAIVER.** BORROWER AND EACH AND EVERY ENDORSER, GUARANTOR AND SURETY OF THE OBLIGATIONS SECURED BY THIS MORTGAGE, AND EACH OTHER PERSON WHO IS OR WHO SHALL BECOME LIABLE FOR ALL OR ANY PART OF THE OBLIGATIONS SECURED BY THIS MORTGAGE, HEREBY ACKNOWLEDGE THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A COMMERCIAL TRANSACTION AND WAIVE THEIR RIGHTS TO NOTICE AND HEARING UNDER ANY APPLICABLE LAW WITH RESPECT TO ANY PREJUDGMENT REMEDY WHICH LENDER MAY DESIRE TO USE.

Section 6.3. **JURY TRIAL WAIVER.** BORROWER AND LENDER (BY ACCEPTANCE OF THIS MORTGAGE) MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY OTHER LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF LENDER RELATING TO THE ADMINISTRATION OF THE LOAN OR ENFORCEMENT OF THE LOAN DOCUMENTS, AND AGREE THAT NEITHER PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EXCEPT AS PROHIBITED BY LAW, BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL

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DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. BORROWER CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR LENDER TO ACCEPT THIS MORTGAGE AND MAKE THE LOAN.

Section 6.4. Cross Default and Cross Collateral. Borrower acknowledges and agrees that the occurrence of an Event of Default under the terms of this Mortgage shall constitute a default under the other Loan Documents in effect at the time of any such default and under the documents evidencing any other loan now existing or hereafter made by Lender to Borrower, and a default under the other Loan Documents or any of them or any of said existing or future loans shall constitute an Event of Default under this Mortgage. The security interests, liens and other rights and interests in and relative to any of the collateral now or hereafter granted to Lender by Borrower by or in any instrument or agreement, including but not limited to this Mortgage and the other Loan Documents, shall serve as security for any and all liabilities of Borrower to Lender, including but not limited to the liabilities described in this Mortgage and the other Loan Documents, and, for the repayment thereof, Lender may resort to any security held by it in such order and manner as it may elect.

Section 6.5. Expenses. Borrower will pay all expenses arising out of the preparation, administration, amendment, protection, collection and/or other enforcement of this Mortgage (including, without limitation, the reasonable fees and expenses of Lender's legal counsel, accountants and appraisers).

Section 6.6. Stamp Tax. Borrower will pay any stamp or other tax which becomes payable in respect of this Mortgage.

Section 6.7. Schedules and Exhibits. The Schedules and Exhibits which are attached hereto are and shall constitute a part of this Mortgage.

Section 6.8. **This Mortgage and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Illinois (the "Governing State") (excluding the laws applicable to conflicts or choice of law). BORROWER AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN THE COURTS OF THE STATE OF ILLINOIS OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON BORROWER BY MAIL AT THE ADDRESS SET FORTH IN SECTION 6.1 OF THIS MORTGAGE. BORROWER HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT FORUM.**

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Section 6.9. Survival of Representations. All representations, warranties, covenants and agreements contained in this Mortgage shall continue in full force and effect until all of the Obligations shall have been paid in full.

Section 6.10. Amendments. No modification or amendment of this Mortgage shall be effective unless same shall be in writing and signed by the parties hereto.

Section 6.11. Successors and Assigns. This Mortgage shall be binding upon and shall inure to the benefit of Borrower, Lender and their respective permitted successors and assigns.

Section 6.12. Severability. Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 6.13. Headings. All article and section headings in this Mortgage are included for convenience of reference only and shall not constitute a part of this Mortgage for any other purpose.

Section 6.14. Interpretation and Construction. The following rules shall apply to the interpretation and construction of this Mortgage unless the context requires otherwise: (a) the singular includes the plural and the plural, the singular; (b) words importing any gender include the other genders; (c) references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute to which reference is made and all regulations promulgated pursuant to such statutes; (d) references to "writing" includes printing, photocopying, typing, lithography and other means of reproducing words in a tangible visible form; (e) the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; (f) references to the introductory paragraph, preliminary statements, articles, sections (or subdivisions of sections), exhibits or schedules are to those of this Mortgage unless otherwise indicated; (g) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent that such amendments and other modifications are permitted or not prohibited by the terms of this Mortgage; (h) references to persons include their respective permitted successors and assigns; and (i) "or" is not exclusive.

Section 6.15. Replacement of Promissory Note. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other security document which is not of public record, and, in the case of any such loss, theft, destruction or mutilation, upon cancellation of such Note or other security document, Borrower will issue, in lieu thereof, a replacement note or other security document in the same principal amount thereof and otherwise of like tenor.

Section 6.16. Counterparts. This Mortgage may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Mortgage by telecopier, facsimile machine, portable document format ("PDF") or other electronic means shall be as effective as delivery of a manually executed

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counterpart of this Mortgage. The effectiveness of any such documents and signatures shall, subject to Applicable Laws, have the same force and effect as manually signed originals and shall be binding on Borrower and Lender. Lender may also require that any such documents and signatures be confirmed by a manually signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature. No party may raise the use of a telecopier, facsimile machine, PDF or other electronic means, or the fact that any signature was transmitted through the use of a telecopier, facsimile machine, PDF or other electronic means, as a defense to the enforcement of this Mortgage.

Section 6.17. Discharge. If the indebtedness which in accordance with the provisions hereof shall be secured hereby, and any extensions or renewals thereof and any and all other amounts due hereunder, under the Loan Agreement, the Note, and the other Loan Documents shall be well and truly paid according to their tenor, and if all agreements and provisions contained in the Loan Agreement, the Note, and the other Loan Documents and herein are fully kept and performed, then this Mortgage shall become null and void; otherwise to remain in full force and effect.

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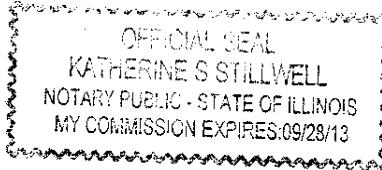
IN WITNESS WHEREOF, Borrower has executed and delivered this Mortgage as of this 24 day of August, 2012.

BORROWER:

NILES NURSING REALTY LLC

By: *Moishe Gabin*
Name: Moishe Gabin
Title: Manager

STATE OF Illinois)
COUNTY OF Cook)



On this the 24 day of August, 2012, before me, the undersigned officer, personally appeared Moishe Gabin, known to me (or satisfactorily proven) to be the Manager of Niles Nursing Realty LLC, an Illinois Limited Liability Company and acknowledged that **[he/she]** executed the foregoing instrument for the purposes therein contained as **[his/her]** free act and deed and the free act and deed of said company.

In Witness Whereof I hereunto set my hand

Katherine S. Stillwell
Notary Public/My Commission Expires: 9/28/13

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Exhibit A

Legal Description of Property

LOTS 17, 18, 19, 20, 21 AND 22 IN ARTHUR T. MCINTOSH AND COMPANY'S GLENVIEW ACRES, BEING A SUBDIVISION OF PART OF LOT 3 IN OWNERS SUBDIVISION IN SECTION 11, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 20, 1943, AS DOCUMENT NUMBER 13 033 467 IN COOK COUNTY, ILLINOIS.

Commonly Known as: 9777 Greenwood, Niles, IL 60714.

Property Tax I.D. Number: 09-11-306-005-0000
09-11-306-006-0000
09-11-306-013-0000

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit B

Leases

Lease Agreement between Niles Nursing Realty LLC and Niles Nursing & Rehabilitation Center LLC

~~X~~ ~~X~~ ~~X~~

~~X~~

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit C

Permitted Encumbrances

1. Taxes for the years 2012 and thereafter, not yet due and payable.
2. Rooftop lease with option between voicestream GSM1 Operating Company, LLC and Hampton Plaza HealthCare Center Real Estate Limited Partnership dated June 13, 2003.
3. Covenants, conditions and restrictions of record as set forth on Schedule B to Fidelity National Title Insurance Loan Policy Number 2011-053003408-USC issued to Lender.

Property of Cook County Clerk's Office

