

1

212120

UNOFFICIAL COPY

This instrument was prepared by:
David A. Barsky, Esq.
Krooth & Altman LLP
1850 M Street, NW, Suite 400
Washington, DC 20036
(202) 293-8200



Doc#: 1311419063 **Fee:** \$72.00
RHSP Fee: \$10.00 Affidavit Fee:
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 04/24/2013 12:30 PM Pg: 1 of 18

~~And after recording should please be returned to:~~

U.S. Department of Housing and
Urban Development
Chicago Regional Office, Region V
Ralph H. Metcalfe Federal Building
77 W. Jackson Boulevard, 26th Floor
Chicago, Illinois 60604-3507
Attention: Amy Jo Conroy, Esq.

REGULATORY AGREEMENT NURSING HOMES

LESSEE: Alden - Northmoor Rehabilitation and Health Care Center, Inc.,
an Illinois corporation

COMMISSIONER: Federal Housing Commissioner

LANDLORD: Alden Master Tenant Association, L.L.C.,
an Illinois limited liability company

PROJECT NAME: Alden Northmoor Rehabilitation and Health Care Center

FHA PROJECT NO.: 071-22226

LESSEE'S ADDRESS: c/o Alden Management Services, Inc.
4200 W. Peterson Avenue, Suite 140
Chicago, Illinois 60646

LANDLORD'S ADDRESS: c/o Alden Management Services, Inc.
4200 W. Peterson Avenue, Suite 140
Chicago, Illinois 60646

PROJECT ADDRESS: 5831 N. Northwest Highway, Chicago, Illinois 60631
(Cook County)

PERMANENT REAL ESTATE INDEX NOS. 13-06-409-017, Vol. 323
13-06-409-018, Vol. 323
13-06-409-019, Vol. 323
13-06-409-020, Vol. 323
13-06-409-021, Vol. 323
13-06-409-022, Vol. 323
13-06-409-023, Vol. 323
13-06-409-024, Vol. 323
13-06-409-025, Vol. 323

Regulatory Agreement Nursing Homes

UNOFFICIAL COPY

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

Project Number 071-22226		Mortgagee CAMBRIDGE REALTY CAPITAL LTD. OF ILLINOIS, an Illinois corporation	
Amount of Mortgage Note \$14,015,400.00		Date as of April 1, 2013	
Mortgage Recorded (State) Illinois	County Cook	Date recorded concurrently herewith	
Book	Page		

Doc # 1311419055

This Agreement entered into as of this 1st day of April, 2013

between ALDEN - NORTHMOOR REHABILITATION AND HEALTH CARE CENTER, INC., an Illinois corporation
whose address is c/o Alden Management Services, Inc., 4200 W. Peterson Avenue, Suite 140, Chicago, Illinois 60646

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

In consideration of the consent of the Commissioner to the ^{subleasing} ~~leasing~~ of the aforesaid project by ALDEN MASTER TENANT ASSOCIATION, L.L.C., an Illinois limited liability company _____, Landlord and in order to comply with the requirements of the National Housing Act and the Regulations adopted by the Commissioner pursuant thereto, Lessees agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the Contract of Mortgage Insurance continues in effect, and during such further period of time as the Commissioner shall be the owner, holder or reinsurer of the mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property:

sublease (hereafter, the "lease")

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

UNOFFICIAL COPY

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

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

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

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

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

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

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

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

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

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

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first hereinabove written.

LESSEE:

ALDEN - NORTHMOOR REHABILITATION AND HEALTH CARE CENTER, INC.,
an Illinois corporation

By: *Joan Carl*
Name: Joan Carl
Its: Vice President

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I *Anna Goldstein* certify that Joan Carl, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that she signed and delivered the instrument as her free and voluntary act, for the uses and purposes therein set forth.

Dated: April *9*, 2013.



Anna Goldstein
Notary Public

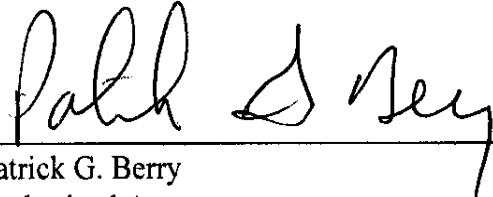
My Commission Expires: *2/24/2014*

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

UNOFFICIAL COPY

COMMISSIONER:

**Secretary of Housing and Urban Development,
acting by and through the Federal Housing
Commissioner**

By: 
Patrick G. Berry
Authorized Agent
Office of Residential Care Facilities

ACKNOWLEDGEMENT

STATE OF MICHIGAN)
) ss:
COUNTY OF WAYNE)

The foregoing instrument was acknowledged before me Rasheedah C. Dix,
a Notary Public, this 15th day of April 2013 by Patrick G. Berry as the Authorized
Agent for the Secretary of the U.S. Department of Housing and Urban Development, acting by
and through the Federal Housing Commissioner, and a Supervisory Account Executive in the
Office of Residential Care Facilities, U.S. Department of Housing and Urban Development, and
that he, being authorized to do so by virtue of such office, executed the foregoing instrument on
behalf of the Federal Housing Commissioner, acting for the Secretary of the U.S. Department of
Housing and Urban Development.

[SEAL]


Notary Public, State of Michigan

(Print Name) Rasheedah C. Dix

[Acting in the] County of Wayne

My commission expires: August 15, 2018

Exhibits:

- Exhibit "A" – Legal Description
- Exhibit "B" – Memorandum of Lease (Sublease)
- LEAN Rider to Regulatory Agreement Nursing Homes

RASHEEDAH C. DIX
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Aug 15, 2018
ACTING IN COUNTY OF Wayne

UNOFFICIAL COPY

EXHIBIT "A" LEGAL DESCRIPTION

LOT 36 (EXCEPT THE SOUTHEASTERLY 5 FEET THEREOF) AND ALL OF LOTS 37 TO 48 IN BLOCK 8 IN WILSON'S RESUBDIVISION OF BLOCKS 85, 86, 92, 93 AND 94 IN NORWOOD PARK, BEING A PART OF SECTION 6, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. ✓

PROPERTY ADDRESS: 5831 N. NORTHWEST HIGHWAY
CHICAGO, ILLINOIS 60631
(COOK COUNTY)

PERMANENT REAL ESTATE INDEX NOS.:

- 13-06-409-017, VOL. 323 (Affects: Lots 47 and 48)
 13-06-409-018, VOL. 323 (Affects: Lot 46 and the Northwesternly 5 feet of Lot 45)
 13-06-409-019, VOL. 323 (Affects: Lot 45 (except the Northwesternly 5 feet and the Northwesternly 10 feet of Lot 44)
 13-06-409-020, VOL. 323 (Affects: Lot 43 (except the Southeasterly 10 feet and Lot 44 (except the Northwesternly 10 feet))
 13-06-409-021, VOL. 323 (Affects: Lot 43 (except the Northwesternly 15 feet) and Lot 42 (except the Southeasterly 5 feet))
 13-06-409-022, VOL. 323 (Affects: Lot 41 and the Southeasterly 5 feet of Lot 42)
 13-06-409-023, VOL. 323 (Affects: Lot 39 (except the Southeasterly 20 feet) and all of Lot 40)
 13-06-409-024, VOL. 323 (Affects: Lot 38 and the Southeasterly 20 feet of Lot 39)
 13-06-409-025, VOL. 323 (Affects: Lot 36 (except the Southeasterly 5 feet) and Lot 37)

UNOFFICIAL COPY

EXHIBIT "B"
MEMORANDUM OF LEASE
(SUBLEASE)

SEE ATTACHED

Property of Cook County Clerk's Office



UNOFFICIAL COPY

Recording request by, and
 After recording, return to:
 Krooth & Altman LLP
 1850 M Street, NW, Suite 400
 Washington, DC 20036
 Attn: David Barsky, Esq.

MEMORANDUM OF LEASE
(Sublease)

THIS MEMORANDUM OF LEASE ("Memorandum of Lease") is executed as of April 26, 2013 by and between ALDEN MASTER TENANT ASSOCIATION, L.L.C., an Illinois limited liability company (the "Sublessor"), and ALDEN - NORTHMOOR REHABILITATION AND HEALTH CARE CENTER, INC. an Illinois corporation, (the "Sublessee").

RECITALS

WHEREAS, Sublessor and Sublessee have executed that certain Sublease dated as of April 26, 2013 (the "Sublease"), covering certain land as more particularly described in Exhibit A attached hereto and incorporated herein by this reference and improved with a nursing facility, together with Sublessor's easements and appurtenants in adjoining and adjacent land, highways, roads, streets lands, whether public or private, reasonably required for the installation, maintenance, operation and service of sewer, water, gas, power and other utility lines and for driveways and approaches to and from abutting highways for the use and benefit of the above-described parcel of real estate located at 5831 N. Northwest Highway, City of Chicago, County of Cook, State of Illinois 60631.

WHEREAS, Sublessor and Sublessee desire to record notice of the Sublease in the public records of Cook County, Illinois.

NOW THEREFORE, in consideration of the foregoing, Sublessor and Sublessee hereby declare as follows:

1. **Demise**. Sublessor hereby subleases the Property to Sublessee and Sublessee hereby subleases the property from Sublessor, subject to the terms, covenants and conditions contained in the Sublease, as amended.
2. **Expiration Date**. The term of the Sublease (the "Term") commenced on April 26, 2013 and shall expire on December 31, 2021 unless sooner terminated or extended as provided in the Sublease.

[SIGNATURE PAGE FOLLOWS]

UNOFFICIAL COPY

SIGNATURE PAGE TO MEMORANDUM OF LEASE

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

SUBLESSOR:

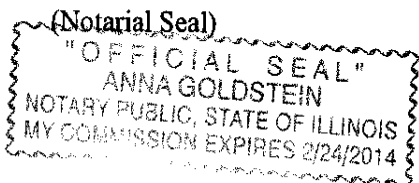
ALDEN MASTER TENANT ASSOCIATION, L.L.C.,
an Illinois limited liability company


By: 
Name: Joan Carl
Its: Manager

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

Be it remembered, that on this 10 day of APRIL, 2013, before me JOAN CARL, the MANAGER of ALDEN MASTER TENANT ASSOCIATION, L.L.C., an Illinois limited liability company, who is personally known to me to be the same person who executed the foregoing instrument, and he duly acknowledged the execution of the same for and on behalf of and as the act and deed of said limited liability company in witness whereof, I have hereunto set my hand and affixed my official seal the day and year above written.




(Notary Public)

My commission expires: 2/24/2014

(SIGNATURE PAGES CONTINUE)

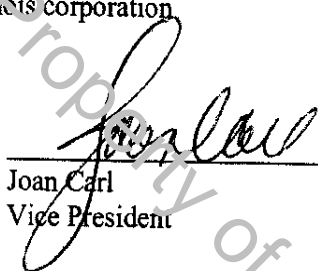
UNOFFICIAL COPY

SIGNATURE PAGE TO MEMORANDUM OF LEASE

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

SUBLESSEE:

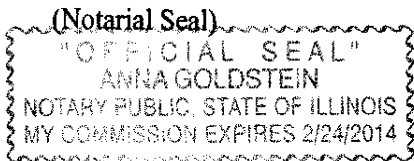
ALDEN – NORTHMOOR REHABILITATION AND HEALTH CARE CENTER, INC.,
an Illinois corporation

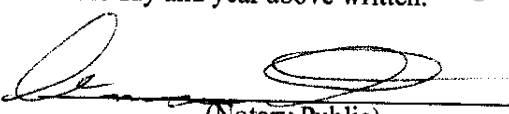
By: 
Name: Joan Carl
Its: Vice President

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

Be it remembered, that on this 10 day of APRIL, 2013, before me JOAN CARL, the VICE PRESIDENT of ALDEN – NORTHMOOR REHABILITATION AND HEALTH CARE CENTER, INC., an Illinois corporation, who is personally known to me to be the same person who executed the foregoing instrument, and he duly acknowledged the execution of the same for and on behalf of and as the act and deed of said corporation in witness whereof, I have hereunto set my hand and affixed my official seal the day and year above written.




(Notary Public)

My commission expires: 2/24/2014

UNOFFICIAL COPY

EXHIBIT A

LOT 36 (EXCEPT THE SOUTHEASTERLY 5 FEET THEREOF) AND ALL OF LOTS 37 TO 48 IN BLOCK 8 IN WILSON'S RESUBDIVISION OF BLOCKS 85, 86, 92, 93 AND 94 IN NORWOOD PARK, BEING A PART OF SECTION 6, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 5831 N. NORTHWEST HIGHWAY
CHICAGO, ILLINOIS 60631
(COOK COUNTY)

PERMANENT REAL ESTATE INDEX NOS.:

- 13-06-409-017, VOL. 323 (Affects: Lots 47 and 48)
 13-06-409-018, VOL. 323 (Affects: Lot 46 and the Northwesterly 5 feet of Lot 45)
 13-06-409-019, VOL. 323 (Affects: Lot 45 (except the Northwesterly 5 feet) and the Northwesterly 10 feet of Lot 44)
 13-06-409-020, VOL. 323 (Affects: Lot 43 (except the Southeasterly 10 feet) and Lot 44 (except the Northwesterly 10 feet))
 13-06-409-021, VOL. 323 (Affects: Lot 43 (except the Northwesterly 15 feet) and Lot 42 (except the Southeasterly 5 feet))
 13-06-409-022, VOL. 323 (Affects: Lot 41 and the Southeasterly 5 feet of Lot 42)
 13-06-409-023, VOL. 323 (Affects: Lot 39 (except the Southeasterly 20 feet) and all of Lot 40)
 13-06-409-024, VOL. 323 (Affects: Lot 38 and the Southeasterly 20 feet of Lot 39)
 13-06-409-025, VOL. 323 (Affects: Lot 36 (except the Southeasterly 5 feet) and Lot 37)

UNOFFICIAL COPY

LEAN Rider to Regulatory Agreement Nursing Homes

This Rider is attached to and made a part of that certain Regulatory Agreement Nursing Homes dated as of **April 1, 2013** (the "Agreement") by and between **Alden - Northmoor Rehabilitation and Health Care Center, Inc.**, an Illinois corporation (the "Lessee") and the Federal Housing Commissioner (the "Commissioner") with respect to **Alden Northmoor Rehabilitation and Health Care Center**, FHA Project No. **071-22226**. In the event of any conflict between any provision of this Rider and any other provision of the Agreement, the provision of this Rider shall be controlling. The Agreement is hereby amended, modified and supplemented as follows:

A. Subleases. Paragraph 4 of the Agreement is hereby deleted in its entirety and the following is substituted in lieu thereof:

- (4) Except for subleases to individual residents, the lessee shall not sublease the project or any part thereof without the prior written consent of the Commissioner.

B. Permits and Approvals; Professional Liability Insurance. Paragraph 5 of the Agreement is hereby deleted in its entirety and the following is substituted in lieu thereof:

- (5) (a) As used herein, "Approved Use" means the use of the project as a **198-bed skilled nursing facility** and such other uses as may be approved in writing from time to time by the Commissioner based upon a request made by the mortgagor or the lessee, but excluding any uses that are discontinued with the written approval of the Commissioner. As used herein, "Permits and Approvals" means and includes all certificates of need, bed authority, provider agreements, licenses, permits and approvals required to operate the project for the Approved Use. The lessee shall at all times maintain in full force and effect the Permits and Approvals. Without the prior written consent of the Commissioner, the lessee shall not convey, assign, encumber, transfer or alienate from the project any of the Permits or Approvals. The lessee shall ensure that the project is at all times operated in accordance with the requirements of the Permits and Approvals. The security agreement and UCC financing statements referred to in paragraph 18 hereof shall constitute, to the extent permitted by law, a first lien upon all of the lessee's rights, titles and interest, if any, in the Permits and Approvals. However, in the event of either a monetary or other default under this Agreement, any Regulatory Agreement between the mortgagor and the Secretary of Housing and Urban Development with respect to the project (the "Owner Regulatory Agreement") or any note or mortgage with respect to the project that is insured or held by the Commissioner, the lessee shall cooperate in any legal and lawful manner necessary or required to permit the continued operation of the project for the Approved Use. For the intents and purposes

UNOFFICIAL COPY

herein, lessee hereby irrevocably nominates and appoints the Commissioner, his/her successors and assigns, as its attorney-in-fact coupled with an interest to do all things necessary, including but not limited to, the power and authority to provide any and all information and data, pay such fees as may be required, and execute and sign in the name of the lessee, its successors or assigns, required by any governmental entity exercising jurisdiction over the project, any and all documents, necessary to continue to operate the project for the Approved Use.

(b) The lessee will not alter, or suffer or permit the alteration of any Permit or Approval that is issued or held in the name of the lessee without the prior written consent of the Commissioner. In the event that any such alteration is proposed, upon learning of such proposed alteration, the lessee will advise the Commissioner and mortgagee promptly.

(c) The lessee shall deliver to the Commissioner and the mortgagee, within ten (10) days after receipt thereof, copies of any and all notices, reports, surveys and other correspondence (regardless of form) received by lessee from any governmental authority that includes any statement, finding or assertion that (i) the lessee or the project is or may be in violation of (or default under) any of the Permits or Approvals or any governmental requirements applicable thereto, (ii) any of the Permits or Approvals are to be terminated or not renewed or (iii) the lessee or the project is subject to any governmental investigation or inquiry involving fraud. Lessee shall deliver to the Commissioner and the mortgagee, simultaneously with delivery thereof to any governmental authority, any and all responses given by or on behalf of the lessee to any of the foregoing and shall provide to the Commissioner and the mortgagee, promptly upon request, such information regarding any of the foregoing as the Commissioner or the mortgagee may request. The receipt by the Commissioner and/or the mortgagee of notices, reports, surveys, correspondence and other information shall not in any way impose any obligation or liability on the Commissioner, the mortgagee or their respective agents, representatives or designees to take (or refrain from taking) any action, and the Commissioner, the mortgagee and their respective agents, representatives and designees shall have no liability for any failure to act thereon or as a result thereof.

(d) The lessee shall maintain, and/or cause to be maintained, professional liability insurance that complies with the applicable requirements of the Commissioner. Annually, the lessee shall provide, or cause to be provided, to the Commissioner and mortgagee, a certification of compliance with the Commissioner's professional liability insurance requirements.

C. Use of the Project. Paragraph 8 of the Agreement is hereby deleted in its entirety and the following is substituted in lieu thereof:

(8) Lessee shall not use the project for any purpose except the Approved Use.

UNOFFICIAL COPY

D. Defaults. Paragraphs 9 and 10 of the Agreement are hereby deleted in their entirety and the following are substituted in lieu thereof:

- (9) In the event that lessee receives a written notice from the Commissioner or the mortgagee (i) stating that a default exists under the Owner Regulatory Agreement or any note or mortgage with respect to the project that is insured or held by the Commissioner, and (ii) directing the lessee to make future payments due under the lease to the Commissioner or the mortgagee, the lessee will thereafter make all future payments under the lease to the Commissioner or the mortgagee as so directed.
- (10) The lease may be cancelled upon thirty days written notice by the Commissioner given to the mortgagor and the lessee for a violation by the lessee of any provision of this Agreement, unless the violation is corrected to the satisfaction of the Commissioner within said thirty day period; provided, however, that said thirty day period shall be extended for up to ninety additional days so long as (i) all of the payment obligations of the mortgagor under the note, mortgage and Owner Regulatory Agreement are being timely satisfied, (ii) none of the Permits or Approvals is at material risk of being terminated, (iii) such violation cannot reasonably be corrected during said thirty day period, but can reasonably be corrected within one hundred twenty days of such notice, and (iv) the lessee commences to correct such violation during said thirty day period and thereafter diligently and continuously proceeds to correct such violation to the satisfaction of the Commissioner.

E. Transfers; Change in Control; Lease Amendments. Paragraphs 11 and 12 of the Agreement are hereby deleted in their entirety and the following are substituted in lieu thereof:

- (11) The prior written approval of Commissioner shall be required for (a) any change in or transfer of the management, operation, or control of the project or (b) any change in the ownership of the lessee that requires the approval of the Commissioner under the Commissioner's previous participation approval requirements and procedures.
- (12) (a) The lease shall not be terminated prior to the expiration date thereof or assigned without the prior written approval of the Commissioner. In the event of any assignment of the lease, as a condition to such assignment, the assignee shall execute and deliver a regulatory agreement in form and substance satisfactory to the Commissioner.

(b) Without the prior written approval of the Commissioner, the lease shall not be amended so as to (i) reduce the rent or other payments due thereunder, (ii) increase the obligations of the mortgagor or the rights of the lessee, (iii) decrease the rights of the mortgagor or the obligations of the lessee, or (iv)

UNOFFICIAL COPY

alter any provision of the lease that the Commissioner required to be included therein. Copies of all amendments to the lease shall be promptly furnished to the Commissioner and the mortgagee.

F. Management Contracts. Paragraph 13 of the Agreement is hereby deleted in its entirety and the following is hereby substituted in lieu thereof:

- (13) The lessee shall not enter into any management agreement involving the project, unless such shall contain a provision that, in the event of default under this Agreement or the Owner Regulatory Agreement, the management agreement shall be subject to termination without penalty upon written request of the Commissioner. Upon such request, lessee shall immediately arrange to terminate the management agreement within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Commissioner for the continuing proper management of the project. In addition to the foregoing, in the event that a management agent is (or will be) the holder of the project's license and/or is (or will be) the payee under one or more third party payor agreements with respect to the project, the provisions of paragraphs 6(j) and 6(k) of the Owner Regulatory Agreement shall be applicable to such management agreement as and to the same extent as if such management agreement were an operating lease.

G. Confidentiality of Resident/Patient Medical Records and Information. Paragraph 14 of the Agreement is hereby amended to add the following:

The obligations of lessee under this paragraph shall be limited to the extent necessary in order for lessee to comply with applicable laws regarding the confidentiality of resident/patient medical records and information.

H. Financial Statements; Reporting Requirements. The following is hereby added to the Agreement as paragraph 17:

- (17) (a) Within ninety (90) days following the end of each fiscal year, the lessee shall furnish to the Commissioner a complete annual financial report based upon an examination of the books and records of the operations of the property and of the project prepared in accordance with the requirements of the Commissioner, prepared and certified by a responsible officer of the lessee under the provisions of 18 U.S.C. Section 1001, 1010, and 1012. If lessee (or any direct or indirect parent of lessee) is required to provide an audited financial statement to any lender, lessee shall simultaneously provide copies of such audited financial statements to the Commissioner and mortgagee.

(b) Lessee shall submit to the Commissioner and mortgagee, on a monthly or quarterly basis (as specified by the Commissioner) such financial reports (including, but not limited to, financial statements, accounts receivable aging

UNOFFICIAL COPY

reports and occupancy reports) in the formats and at such times as may be required by the Commissioner.

(c) At request of the Commissioner, the lessee shall give specific answers to questions upon which information is desired from time to time relative to income, assets, liabilities, contracts, operation, and condition of the project.

I. Security Interest; Accounts Receivable Financing. The following is hereby added to the Agreement as paragraph 18:

(18) (a) Except as otherwise approved in writing by the Commissioner, the lessee shall grant to the mortgagee and the Commissioner a first lien security interest in all personal property of the lessee related to the project as additional security for the obligations of the mortgagor under the note, mortgage and Owner Regulatory Agreement. Such security interest shall be evidenced by such security agreements as the mortgagee and/or the Commissioner may require and, in connection therewith, the lessee shall execute and deliver such deposit account control agreements as may be required by the mortgagee and/or the Commissioner. Lessee hereby authorizes each of the mortgagee and the Commissioner to file such UCC financing statements and continuation statements as either of them may deem to be necessary or appropriate in connection with the foregoing security interest. With the prior written approval of the mortgagee and the Commissioner, provided that there is no identity-of-interest between mortgagor and lessee, in lieu of the security interest referred to above, lessee shall grant to the mortgagee a first lien security interest in such personal property of the lessee as may be required by the mortgagee and/or the Commissioner as security for the obligations of lessee under the lease. Except as provided in this paragraph 18, without the prior written approval of the mortgagee and the Commissioner, the lessee shall not be permitted to grant any other liens on any of the personal property of the lessee related to the project. If the project includes a skilled nursing home, the lessee shall be permitted to pledge its accounts receivable to an accounts receivable lender in a manner approved by the mortgagee and the Commissioner. In the event that the mortgagee and the Commissioner grant such approval, (i) the holder(s) of such lien shall enter into an intercreditor and a rider to intercreditor agreement with the mortgagee and/or the Commissioner on such terms and conditions as may be required by the mortgagee and the Commissioner and (ii) the lessee and mortgagor shall agree to comply with the requirements imposed on them by the mortgagee and the Commissioner in connection therewith.

J. Legal Description. The following is hereby added to the Agreement as paragraph 19:

(19) The legal description of the mortgaged property is attached hereto as Exhibit "A".

UNOFFICIAL COPY

K. Lessee's Accounts Receivables (AR) Financing. The following is hereby added to the Agreement as paragraph 20:

- (20) (a) Lessee is permitted to pledge its health care accounts receivable to an Accounts Receivable Lender in a manner approved by the Commissioner. To evidence this requirement, Lessee has entered into an Intercreditor Agreement and Rider to Intercreditor Agreement with the AR Lender, HUD Mortgagee, and Landlord in a format approved by the Commissioner and agrees to comply with its terms.

(b) The accounts receivable loan documents between the AR Lender and Lessee (the "AR Loan Documents") include a deposit account control agreement (the "Control Account Agreement") by and among AR Lender, Lessee and Lessee's depository bank (the "Depository Bank"), and into which Lessee's accounts receivable are deposited. Lessee hereby covenants and agrees with the Commissioner as follows: Upon the "indefeasible payment in full" (as defined in the Intercreditor Agreement) of the AR Lender named in the Intercreditor Documents, and provided Lessee does not substitute or replace its existing AR Lender with a new accounts receivable lender (in which event the provisions of the first paragraph of this Section 20 shall apply), Lessee shall promptly enter into and shall cause its Depository Bank to enter into a control deposit account agreement with Mortgagee and HUD, as secured parties, and containing substantially the same terms as the Control Account Agreement.

K. Risk Management Program. The following is hereby added to the Agreement as paragraph 21:

- (21) The Lessee shall implement a third party risk management agreement/program at the project, which incorporates real-time incident reporting and a tracking system that informs senior management of all incidents with a potential liability to the Lessee and/or the project. Third-part review of the incidents shall be performed by trained professionals and the risk management agreement/program shall include provisions for training and follow-up with project staff, as necessary. The Lessee shall not opt to cease the risk management agreement/program, without the prior written consent of the Commissioner.

[SEE ATTACHED SIGNATURE PAGE]

UNOFFICIAL COPY

IN WITNESS WHEREOF the Lessee has executed this Rider as of the day and year first above written.

LESSEE:

ALDEN - NORTHMOOR REHABILITATION AND HEALTH CARE CENTER, INC.,
an Illinois corporation

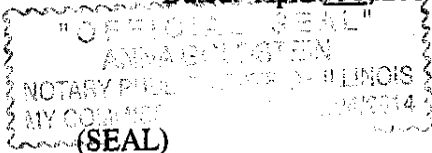
By: *Joan Carl*
Name: Joan Carl
Its: Vice President

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I *ANNA GOLDSTEIN* certify that Joan Carl, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that she signed and delivered the instrument as her free and voluntary act, for the uses and purposes therein set forth.

Dated: April *9*, 2013.



[Signature]
Notary Public

My Commission Expires: *2/24/2014*