

UNOFFICIAL COPY

Document prepared by,
recording requested by
and when recorded return to:

Joseph B. Heil, Esquire
Dechert Price & Rhoads
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103-2793

95808477

DEPT-01 RECORDING \$125.50
740011 TRAN 8958 11/21/95 16:29:00
\$7798 + RV *95-808477
COOK COUNTY RECORDER

125.50
aw

MORTGAGE, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

by

FAIRVIEW HEALTH CARE PROPERTIES, L.L.C.

(as Mortgagor)

to

NOMURA ASSET CAPITAL CORPORATION

(as Mortgagee)

Dated as of: November 17, 1995

Property: 701 LaGrange Road
LaGrange Park, IL 60525
PIN: 15-33-128-010; 15-33-128-011

95808477

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	
Definitions	3
Section 1.01. Certain Defined Terms	3
Section 1.02. Interpretation of Defined Terms	8
ARTICLE II	
Particular Covenants and Agreements of the Mortgagor	8
Section 2.01. Payment of Secured Loan Obligations	8
Section 2.02. Title, etc.	8
Section 2.03. Further Assurances; Filing; Re-Filing; etc.	9
Section 2.04. Liens	10
Section 2.05. Insurance and Casualty Events	10
Section 2.06. Impositions	16
Section 2.07. Maintenance of the Improvements and Equipment	17
Section 2.08. Compliance With Laws	17
Section 2.09. Limitations of Use	20
Section 2.10. Inspection of the Property	20
Section 2.11. Actions to Protect Mortgaged Estate	20
Section 2.12. Condemnation	21
Section 2.13. Insurance and Condemnation Proceeds	23
Section 2.14. Leases; Management Agreements	24
ARTICLE III	
Assignment of Rents, Issues and Profits	24
Section 3.01. Assignment of Rents, Issues and Profits	24
ARTICLE IV	
Security Agreement	25
Section 4.01. Security Agreement	25
Section 4.02. Rights Upon Default.	25
Section 4.03. Warranties, Representations and Covenants	25

988-8177

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ARTICLE V

Events of Default; Remedies	26
Section 5.01. Events of Default	26
Section 5.02. Acceleration of Maturity	26
Section 5.03. Default Remedies	26
Section 5.04. Application of Proceeds	29
Section 5.05. Right to Sue	30
Section 5.06. Powers of the Mortgagee	30
Section 5.07. Remedies Cumulative	30
Section 5.08. Waiver of Stay, Extension, Moratorium Laws; Equity of Redemption ..	31
Section 5.09. Waiver of Homestead	31
Section 5.10. Discontinuance of Proceedings	31
Section 5.11. Illinois Mortgage Foreclosure Law	32

ARTICLE VI

Miscellaneous	35
Section 6.01. Reconveyance by Mortgagee	35
Section 6.02. Notices	35
Section 6.03. Amendments; Waivers; etc	35
Section 6.04. Successors and Assigns	35
Section 6.05. Captions	35
Section 6.06. Severability	36
Section 6.07. Indemnity; Expenses	36
Section 6.08. Estoppel Certificates	37
Section 6.09. Applicable Law	37
Section 6.10. Limitation of Interest	37
Section 6.11. Assignment	37
Section 6.12. Time of the Essence	38
Section 6.13. WAIVER OF JURY TRIAL	38
Section 6.15. Exculpation	39
Section 6.16. Exhibits	39

EXHIBITS

A - Description of Land

SCHEDULES

1 - Lease Collateral

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

KNOW ALL PERSONS BY THESE PRESENTS:

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of the 11th day of November 1995 by FAIRVIEW HEALTH CARE PROPERTIES, L.L.C., an Illinois limited liability company having an address at c/o Bell Vending, 5301 West Touhy, Skokie, Illinois 60077, Attention: Eric Rothner, Telefax Number: 708-673-7741 (the "Mortgagor"), in favor of NOMURA ASSET CAPITAL CORPORATION, a Delaware corporation having an address at 2 World Financial Center, Building B, New York, New York 10281-1198, Attention: Gregory Anderson, Telefax Number (212) 667-1022 (together with its successors and assigns, "Mortgagee").

WITNESSETH:

WHEREAS, the Mortgagor, the Mortgagee, Fairfax Health Care Properties, L.L.C., an Illinois limited liability company, and Valparaiso Health Care Properties, L.L.C., an Indiana limited liability company (together, the "Affiliated Borrowers") are parties to a Loan Agreement of even date herewith (said Loan Agreement as modified and supplemented and in effect from time to time, the "Loan Agreement"), which Loan Agreement provides for a loan (the "Loan") to be made by the Mortgagee to the Mortgagor and the Affiliated Borrowers in an aggregate principal amount of up to \$21,750,000. The advance with respect to the Mortgagor's Facility is to be evidenced by, and repayable with interest thereon, at a Default Rate interest, and Late Charges, together with the Yield Maintenance Premium, if any, in accordance with a promissory note executed and delivered by Mortgagor to the order of the Mortgagee (such note, as modified and supplemented and in effect from time to time, the "Note");

WHEREAS, Mortgagor has leased its Facility to an Operator pursuant to a Master Lease and Operator has, in such Master Lease, pledged to Mortgagee a security interest in all of such Operator's Collateral (as defined in the Master Lease) as security for payment of such Operator's obligations to Mortgagor under such Master Lease;

WHEREAS, Mortgagor and the Affiliated Borrowers contemplate that Mortgagee's interest in and to, inter alia, the Loan (or a portion thereof), the Note, this Mortgage and the Loan Documents may be assigned by Mortgagee to another Person, including without limitation to a trustee on behalf of security holders in connection with a Securitization;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

WHEREAS, it is a condition to the obligation of the Mortgagee to extend credit to the Mortgagor pursuant to the Loan Agreement that the Mortgagor execute and deliver this Mortgage; and

WHEREAS, the maximum amount of indebtedness secured hereby is \$43,500,000;

NOW, THEREFORE, in consideration of the making of the Loan by the Mortgagee to the Mortgagor and the Affiliated Borrowers and the covenants, agreements, representations and warranties set forth in the Loan Documents, and for the purpose of securing the following (collectively, the "Loan Obligations"):

(a) all principal (including, without limitation, any advance to the Mortgagor now or hereafter made), interest, Default Rate interest, Late Charges, the Yield Maintenance Premium, if any, owing from time to time under the Note, and all obligations owing by the Mortgagor and the Affiliated Borrowers under the Loan Documents and amendments, modifications, extensions, substitutions, exchanges and renewals of the Loan Documents (each of which amendment, modification, extension, substitution, exchange and renewal shall enjoy the same priority as the advance made on the Closing Date as evidenced by the Notes) and all amounts from time to time owing by the Mortgagor under this Mortgage and the Affiliated Borrowers under any other Loan Documents; and

(b) all covenants, agreements and other obligations of Mortgagor and the Affiliated Borrowers under the Loan Documents;

the Mortgagor hereby irrevocably grants, bargains, sells, releases, conveys, warrants, assigns, transfers, mortgages, pledges, sets over and confirms unto the Mortgagee, its successors and assigns, to have and to hold forever, subject to all the terms, conditions, covenants and agreements herein set forth, for the security and benefit of Mortgagee and its respective successors and assigns, all of Mortgagor's interest in the following described land, real estate, buildings, improvements, equipment, fixtures, furniture, and other personal property (which together with any additional such property and interests hereafter acquired by the Mortgagor and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted, the "Mortgaged Estate") to-wit:

(a) All the land located in the County and State identified in Exhibit A attached hereto, as more particularly described in such Exhibit A, subject, however, to the Permitted Encumbrances (the "Land");

(b) All Improvements and Equipment (the Land, Improvements and Equipment collectively, the "Facility");

(c) All Appurtenant Rights;

(d) All Rents;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

"Accounts" means, to the extent Mortgagor has any right, title or interests in or to any of the following, Mortgagor's rights or the rights of the Operator of such Mortgagor's Facility to payment for goods sold or leased or for services rendered arising from the ownership or operation of Mortgagor's Facility and not evidenced by an Instrument, including, without limitation, all accounts and accounts receivable arising from the ownership or operation of such Facility, now existing or hereinafter coming into existence, and all proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible) received from the sale, exchange, transfer, collection or other disposition or substitution thereof. In addition to the foregoing, the term "Accounts" shall include the meaning as such term has in the UCC.

"Appurtenant Rights" means all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, air rights, development rights and powers, and, to the extent now or hereafter owned by the Mortgagor or Operator of such Mortgagor's Facility, all minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter appurtenant to, or used in connection with, or located on, under or above the Land, or any part or parcel thereof, and all ground leases, subleases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Land or any part thereof.

"Collateral" shall have the meaning set forth in the Loan Agreement to the extent such Collateral relates to the Mortgagor's Facility.

"Condemnation Proceeds" shall have the meaning set forth in the Loan Agreement to the extent such Condemnation Proceeds relate to the Mortgagor's Facility.

"Equipment" means, with respect to Mortgagor to the extent Mortgagor has any rights, title or interests in or to any of the following, all fixtures, appliances, machinery, furniture, furnishings, decorations, tools and supplies, now owned or hereafter acquired, including but not limited to, all beds, linen, radios, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, restaurant and kitchen equipment, all medical, dental, rehabilitation, therapeutic and paramedic equipment and supplies, any building equipment, including but not limited to, all heating, lighting, incinerating, waste removal and power equipment, engines, pipes, tanks, motors, conduits, switchboards, security and alarm systems, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigeration, ventilating, and communications apparatus, air cooling and air conditioning apparatus, escalators, elevators, ducts, and compressors, materials and supplies, and all other machinery, apparatus, equipment, fixtures and fittings now owned or hereafter acquired by Mortgagor, or by the Operator of such Mortgagor's Facility any portion thereof or any appurtenances thereto, together with all additions, replacements, parts, fittings, accessions, attachments, accessories, modifications and alterations of any of the foregoing, to the extent relating to the Facility. In addition to the foregoing, the term "Equipment" shall include the meaning as such term has in the UCC.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

"Event of Default" has the meaning provided in Section 5.01.

"Facility" has the meaning provided in the recitals of this Mortgage.

"General Intangibles" means, to the extent Mortgagor has any rights, title or interests in or to any of the following, all intangible personal property of Mortgagor or of the Operator of such Mortgagor's Facility arising out of or directly relating to the Mortgagor's Facility (other than Accounts, Rents, Instruments, Inventory, Money and Permits), including, without limitation, things in action, settlements, judgments, contract rights, rights to performance (including, without limitation, rights under warranties) refunds of real estate taxes and assessments and other rights to payment of Money, copyrights, trademarks and patents now existing or hereinafter in existence. In addition to the foregoing, the term "General Intangibles" shall include the meaning as such term has in the UCC.

"Instruments" means, to the extent Mortgagor has any rights, title or interests in or to any of the following, all instruments, chattel paper, documents or other writings obtained by Mortgagor or by the Operator of such Mortgagor's Facility from or in connection with the ownership or operation of Mortgagor's Facility evidencing a right to the payment of Money, including, without limitation, all notes, drafts, acceptances, documents of title, and policies and certificates of insurance, including but not limited to, liability, hazard, rental and credit insurance, guarantees and securities, now or hereafter received by such Mortgagor or by the Operator of such Mortgagor's Facility or in which Mortgagor or Operator has or acquires an interest pertaining to the foregoing. In addition to the foregoing, "Instruments" shall include the meaning such term has in the UCC.

"Insurance Proceeds" shall have the meaning set forth in the Loan Agreement to the extent such Insurance Proceeds relate to the Mortgagor's Facility.

"Inventory" means, to the extent Mortgagor has any rights, title or interest in or to any of the following, all goods now owned or hereinafter acquired by Mortgagor or by the Operator of such Mortgagor's Facility intended for sale or lease, or to be furnished under contracts of service by such Mortgagor or the Operator, in connection with such Mortgagor's Facility, including without limitation, all inventories held by Mortgagor or Operator for sale or use at or from Mortgagor's Facility, and all other such goods, wares, merchandise, and materials and supplies of every nature held by Mortgagor or Operator and all such other goods returned to or repossessed by Mortgagor or Operator. In addition to the foregoing, the term "Inventory" shall include the meaning as such term has in the UCC.

"Land" has the meaning provided in the recitals to this Mortgage.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

other agreements of an immaterial nature which may be granted by Mortgagor after the Closing Date and which do not affect (A) the ability of Mortgagor to pay any of its obligations to any Person as and when due, (B) the marketability of title to the Facility, (C) the fair market value of the Facility, or (D) the use or operation of the Facility.

"Permits" means, with respect to the Facility, all licenses, permits, allocations, authorizations, approvals and certificates used in connection with the ownership, operation, construction, renovation, use or occupancy of the Facility, or relating to quality and adequacy of medical care, distribution of pharmaceuticals, rate setting, equipment, personnel, additions and fee splitting, including, without limitation, building permits, business licenses, state health department licenses, food service licenses, licenses to conduct business, certificates of need or similar certificates, approvals issued by any state health department, and all such other permits, licenses and rights, obtained from any Governmental Authority or private Person concerning the ownership, operation, renovation use or occupancy of the Facility as a first class skilled nursing home, congregate care facility, assisted living facility and/or independent living facility, as applicable, with related amenities.

"Proceeds" means all proceeds, whether cash or non-cash, movable or immovable, tangible or intangible (including Insurance Proceeds and Condemnation Proceeds), from the Collateral, including, without limitation, those from the sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the Collateral and all income, gain, credit, distributions and similar items from or with respect to the Collateral. In addition to the foregoing "Proceeds" shall also include the meaning as such term has in the UCC.

"Rents" means, with respect to the Mortgagor and its Facility, to the extent Mortgagor has any rights, title or interests in or to any of the following, (x) all receipts, rents (whether denoted as advance rent, minimum rent, percentage rent, additional rent or otherwise), issues, income, royalties, profits, revenues, proceeds, bonuses, deposits (whether denoted as security deposits or otherwise), lease termination fees or payments, rejection damages, buy-out fees and any other fees made or to be made in lieu of rent, any award made hereafter to Mortgagor or the Operator of such Mortgagor's Facility in any court proceeding involving any tenant, lessee, licensee or concessionaire under any of the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, and all other payments, rights and benefits of whatever nature from time to time due under the Leases, including, without limitation, (i) rights to payment earned under any of the Leases for space in the Improvements, for the operation of ongoing businesses such as restaurants, news stands, barber shops, beauty shops and pharmacies, and (ii) all other income, consideration, issues, accounts, profits or benefits of any nature arising from the ownership, possession, use or operation of the Facility, including, without limitation, all rights to payment from the Medicare and Medicaid programs or similar state or federal programs, boards, bureaus or agencies and rights to payment from patients or private insurers, arising from the operation of the Mortgagor's Facility and (y) all revenues, receipts, income, receivables and accounts relating to or arising from rentals, rent equivalent income,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

income and profits from guest rooms, meeting rooms, food and beverage facilities, vending machines, telephone and television systems, guest laundry, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System of Accounts for Hotels, 8th Edition, International Association of Hospitality Accountants (1986), as from time to time amended.

"UCC" means the Uniform Commercial Code in effect in the jurisdiction in which the Facility is located.

Section 1.02. Interpretation of Defined Terms.

(a) Singular terms shall include the plural forms and vice versa, as applicable, of the terms defined.

(b) All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified or amended, and all replacements and substitutions therefor.

ARTICLE II

Particular Covenants and Agreements of the Mortgagor

Section 2.01. Payment of Secured Loan Obligations. The Mortgagor shall pay when due the principal, the interest, Default Rate interest, Late Charges, and the Yield Maintenance Premium if any, owing from time to time under the Note and all charges, fees and other Loan Obligations as provided in the Loan Documents, including without limitation the other Borrower's obligations under the Loan Documents. Mortgagor's obligation to pay the obligations of the other Borrower's under the Loan Documents shall be both a primary obligation and a guarantee.

Section 2.02. Title, etc.

(a) The Mortgagor represents and warrants that it has good, marketable and insurable fee simple title in and to the Facility, free and clear of all covenants, liens, encumbrances, restrictions, easements and other matters affecting title other than the Permitted Encumbrances. There are no outstanding options to purchase or rights of first refusal affecting the Facility other than rights and options held by the Mortgagor.

(b) The Mortgagor represents and warrants that it has good and absolute title to all existing personal property and fixtures hereby mortgaged. The personal property and fixtures hereby mortgaged are free and clear of all liens, charges and encumbrances whatsoever, including

118096
55808000
11/18/00

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

conditional sales contracts, chattel mortgages, security agreements, financing statements and everything of a similar nature other than the Permitted Encumbrances.

(c) The Mortgagor represents and warrants that it has the full power and lawful authority to grant, bargain, sell, release, convey, warrant, assign, transfer, mortgage, pledge, set over and confirm unto the Mortgagee the Mortgaged Estate as hereinabove provided and warrants that it will forever defend the title to the Mortgaged Estate and the validity and priority of the lien or estate hereof against the claims and demands of all Persons whomsoever.

Section 2.03. Further Assurances; Filing; Re-Filing; etc.

(a) The Mortgagor shall execute, acknowledge and deliver, from time to time, such further instruments as the Mortgagee may reasonably require to accomplish the purposes of this Mortgage.

(b) The Mortgagor, immediately upon the execution and delivery of this Mortgage, and thereafter from time to time, shall cause this Mortgage, any security agreement or mortgage supplemental hereto and each instrument of further assurance to be filed, registered or recorded and refiled, re-registered or re-recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and perfect the lien or estate of this Mortgage upon the Mortgaged Estate.

(c) The Mortgagor shall pay all filing, registration and recording fees, all refiling, re-registration and re-recording fees, and all expenses incident to the execution, filing, recording and acknowledgment of this Mortgage, any security agreement or mortgage supplemental hereto and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of the execution, delivery, filing, registration and recording of the Note, this Mortgage or any of the other Loan Documents, any security agreement or mortgage supplemental hereto or any instruments of further assurance.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation (other than a law, order, rule, or regulation relating to income tax imposed on Mortgagee) subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or security agreements or debts secured thereby or the manner of collecting such taxes so as to adversely affect the Mortgagee, the Mortgagor will pay any such tax on or before the due date thereof. If the Mortgagor fails to make such prompt payment or if, in the opinion of the Mortgagee, any such state, federal, municipal, or other governmental law, order, rule or regulation prohibits the Mortgagor from making such payment or would penalize the Mortgagee if the Mortgagor makes such payment or if, in the opinion of the Mortgagee, the making of such payment might result in the imposition of interest beyond the Maximum Amount, then the entire balance of the Loan

93508587

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Obligations allocated to the Facility shall, at the option of the Mortgagee, become due and payable on the date that is 120 days after the passage of such law, order, rule or regulation.

(e) The Mortgagor hereby indemnifies and holds the Mortgagee harmless from any sales or use tax that may be imposed on the Mortgagee by virtue of the Loan from the Mortgagee to the Mortgagor other than taxes imposed on the income of the Mortgagee.

Section 2.04. Liens. Without limiting the obligations of the Mortgagor under Section 2.06 the Mortgagor shall not create or suffer to be created any mortgage, deed of trust, lien, security interest, charge or encumbrance upon the Mortgaged Estate prior to, on a parity with, or subordinate to the lien of this Mortgage other than a Permitted Encumbrance. The Mortgagor shall pay and promptly discharge at the Mortgagor's cost and expense, any such mortgages, deeds of trust, liens, security interests, charges or encumbrances upon the Mortgaged Estate or any portion thereof or interest therein.

Section 2.05. Insurance and Casualty Events.

(a) At all times while the Mortgagor is indebted to the Mortgagee, the Mortgagor shall maintain the following insurance:

(i) During any period of repair or restoration, builder's "all risk" insurance in an amount equal to not less than the full insurable value of the Facility against such risks (including, without limitation, fire and extended coverage and collapse of the Improvements to agreed limits) as Mortgagee may request, in form and substance acceptable to Mortgagee;

(ii) Insurance with respect to the Improvements, Equipment and Inventory against any peril included within the classification "All Risks of Physical Loss" with extended coverage in amounts at all times sufficient to prevent the Mortgagor from becoming a co-insurer within the terms of the applicable policies, but in any event such insurance shall be maintained in an amount equal to the full insurable value of the Improvements, Equipment and Inventory located on the Facility, the term "full insurable value" to mean the actual replacement cost of the Improvements, Equipment and Inventory (without taking into account any depreciation) determined annually by an insurer or by the Mortgagor or, at the request of the Mortgagee, by an independent insurance broker (subject to the Mortgagee's reasonable approval) including an endorsement covering acts of municipal authorities including increased cost of construction and demolition;

(iii) Comprehensive general liability insurance, including contractual injury, bodily injury, broad form death and property damage liability, and umbrella liability insurance against any and all claims, including all legal liability to the extent insurable imposed upon

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

the Mortgagor and all court costs and attorneys' fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Facility in such amounts as are generally required by institutional lenders for properties comparable to the Facility but in no event with limits for this Facility of less than \$1,000,000 per occurrence if the Facility does not have elevators and \$3,000,000 if the Facility has elevators;

(iv) Statutory workers' compensation insurance (to the extent the risks to be covered thereby are not already covered by other policies of insurance maintained by the Mortgagor), with respect to any work on or about the Facility;

(v) Business interruption and/or loss of "rental value" insurance for the Facility in an amount equal to eighteen months estimated Gross Revenue attributable to the Facility and based on the Gross Revenue for the immediately preceding year and otherwise sufficient to avoid any co-insurance penalty;

(vi) If all or any portion of the Improvements, or any portion of the Land, is located within a federally designated flood hazard zone, flood insurance in an amount equal to the lesser of the full insurable value of the Facility or the maximum amount available;

(vii) Insurance against loss or damage from (A) leakage of sprinkler systems and (B) explosion of steam boilers, air conditioning equipment, pressure vessels or similar apparatus now or hereafter installed at the Facility, in such amounts as the Mortgagee may from time to time require and which are customarily required by institutional mortgagees with respect to similar properties similarly situated; and

(viii) Such other insurance with respect to the Improvements, Equipment and Inventory located on the Facility against loss or damage as is requested by the Mortgagee (including without limitation liquor/dram insurance and earthquake insurance) provided such insurance is of the kind from time to time customarily insured against and in such amounts as are generally required by institutional lenders for properties comparable to the Facility or which Mortgagee may deem necessary in its reasonable discretion.

(b) The Mortgagor will maintain the insurance coverage described in Section 2.05 with companies acceptable to Lender and with a claims paying ability of not less than AA by Standard & Poor's Ratings Services and AA or its equivalent by any one of the other Rating Agencies. All insurers providing insurance required by this Mortgage shall be authorized to issue insurance in the state where the Facility is located.

The insurance coverage required under Section 2.05(a) may be effected under a blanket policy or policies covering the Mortgaged Estate and other property and assets not

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

constituting a part of the Mortgaged Estate; provided that any such blanket policy shall specify, except in the case of public liability insurance, the portion of the total coverage of such policy that is allocated to the Facility and Equipment and Inventory located thereon, and any sublimits in such blanket policy applicable to the Mortgaged Estate, which amounts shall not be less than the amounts required pursuant to Section 2.05(a) and which shall in any case comply in all other respects with the requirements of this Section 2.05.

(c) All insurance policies shall be in such form and with such endorsements and in such amounts as shall be satisfactory to Mortgagee (and Mortgagee shall be entitled to approve amounts, form, risk coverage, deductibles, loss payees and insureds). The policy referred to in Section 2.05(a)(ii) shall contain a replacement cost endorsement and a waiver of depreciation. Originals of all of the above-mentioned insurance policies have been delivered to and shall be held by the Mortgagee. All such policies shall name the Mortgagee as an additional insured/loss payee, shall provide that all Insurance Proceeds be payable to the Mortgagee as set forth in Section 2.05(d), and shall contain: (i) "Non Contributory Standard the Lender Clause" and a Lender's Loss Payable Endorsement (Form 438 BFUNS) or their equivalents naming Mortgagee as the person to which all payments shall be paid (ii) a waiver of subrogation endorsement as to the Mortgagee and its assigns providing that no policy shall be impaired or invalidated by virtue of any act, failure to act, negligence of, or violation of declarations, warranties or conditions contained in such policy by the Mortgagor, the Mortgagee or any other named insured, additional insured or loss payee, except for the willful misconduct of the Mortgagee knowingly in violation of the conditions of such policy; (iii) an endorsement indicating that neither the Mortgagee nor the Mortgagor shall be or be deemed to be a co-insurer with respect to any risk insured by such policies and shall provide for a deductible per loss of an amount not more than that which is customarily maintained by prudent owners of property of the same type and quality as the Facility; (iv) a provision that such policies shall not be canceled or amended, including, without limitation, any amendment reducing the scope or limits of coverage, without at least 30 days prior written notice to the Mortgagee in each instance; and (v) include effective waivers by the insurer of all claims for insurance premiums against any loss payees, additional insureds and named insureds (other than the Mortgagor). Certificates of insurance with respect to all renewal and replacement policies shall be delivered to the Mortgagee not less than ten days prior to the expiration date of any of the insurance policies required to be maintained hereunder which certificates shall bear notations evidencing payment of applicable premiums and originals of such insurance policies shall be delivered to the Mortgagee promptly after the Mortgagor's receipt thereof. If the Mortgagor fails to maintain and deliver to the Mortgagee the original policies or certificates of insurance required by this Mortgage, the Mortgagee may, at its option, after written notice to Mortgagor, procure such insurance, and the Mortgagor shall reimburse the Mortgagee for the amount of all premiums paid by the Mortgagee thereon promptly, after demand by the Mortgagee, with interest thereon at the Default Rate from the date paid by the Mortgagee to the date of repayment, and such sum shall be a part of the Loan Obligations secured by this Mortgage. The aggregate deductible applicable to all insurance policies required by this Mortgage shall not exceed \$2,000.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

The Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and the Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

(d) The Mortgagee shall be entitled to receive and collect all Insurance Proceeds and all of the Insurance Proceeds are hereby assigned to the Mortgagee. The Mortgagor shall execute such further assignments of the Insurance Proceeds as the Mortgagee may from time to time reasonably require. Without limiting the generality of the foregoing, following the occurrence of any casualty or damage involving the Mortgaged Estate or any part thereof, the Mortgagor shall give prompt notice thereof to the Mortgagee and shall cause all Insurance Proceeds payable as a result of such casualty or damage to be paid to the Mortgagee and applied in accordance with Section 2.13, as additional collateral security hereunder subject to the lien of this Mortgage.

(e) Notwithstanding anything to the contrary set forth in Section 2.05(d), the Mortgagee agrees that the Mortgagee shall make the Insurance Proceeds (other than business interruption insurance proceeds, which shall be held and disbursed as provided in Section 2.12(+) of the Loan Agreement) available to the Mortgagor for the Mortgagor's repair, restoration and replacement of the Improvements, Equipment and Inventory damaged or taken on the following terms and subject to the Mortgagor's satisfaction of the following conditions:

(i) At the time of such loss or damage and at all times thereafter while the Mortgagee is holding any portion of such Insurance Proceeds, there shall exist no Default or Event of Default;

(ii) The Improvements, Equipment and Inventory for which loss or damage has resulted shall be capable of being restored (including replacements) to their pre-existing condition and utility in all material respects with a value equal to or greater than prior to such loss or damage, and shall be capable of being completed six months prior to the Maturity Date and prior to the expiration of business interruption insurance;

(iii) The Mortgagor shall demonstrate to the Mortgagee's reasonable satisfaction the Mortgagor's ability to pay the Loan Obligations relating to the Facility coming due during such restoration period;

(iv) Within 30 days from the date of such loss or damage the Mortgagor shall have given the Mortgagee a written notice electing to have the Insurance Proceeds applied for such purpose;

95808477

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(v) Within 60 days following the date of notice under the preceding subparagraph (iv) and prior to any Insurance Proceeds being disbursed to the Mortgagor, the Mortgagor shall have provided to the Mortgagee all of the following:

(v) if loss or damage exceeds \$25,000, complete plans and specifications for restoration, repair and replacement of the Improvements, Equipment and Inventory damaged to the condition, utility and value required by the preceding subparagraph (ii),

(w) if loss or damage exceeds \$25,000, fixed-price or guaranteed maximum cost construction contracts for completion of the repair and restoration work in accordance with such plans and specifications,

(x) if loss or damage exceeds \$25,000, builder's risk insurance for the full cost of construction with the Mortgagee named under a standard mortgagee loss payable clause,

(y) such additional funds as in the Mortgagee's reasonable opinion are necessary to complete the repair, restoration and replacement, and

(z) if loss or damage exceeds \$25,000, copies of all permits and licenses necessary to complete the work in accordance with the plans and specifications;

(vi) If loss or damage exceeds \$25,000, the Mortgagee may, at the Mortgagor's expense to the extent such expenses and fees are reasonable, retain an independent inspector to review and approve plans and specifications and completed construction and to approve all requests for disbursement, which approvals shall be conditions precedent to release of the Insurance Proceeds as work progresses;

(vii) No portion of such Insurance Proceeds shall be made available by the Mortgagee for purposes which are not directly attributable to the cost of repairing, restoring or replacing the Improvements, Equipment and Inventory for which a loss or damage has occurred unless the same are covered by such insurance;

(viii) The Mortgagor shall commence such work within 120 days after such loss or damage and shall diligently pursue such work to completion;

(ix) If loss or damage exceeds \$25,000, each disbursement by the Mortgagee of such Insurance Proceeds shall be funded subject to conditions and in accordance with disbursement procedures which a commercial construction lender would typically establish in the exercise of sound banking practices and shall be made only upon receipt of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

disbursement requests on an AIA G702/703 form (or similar form approved by the Mortgagee) signed and certified by the Mortgagor and its architect and general contractor with appropriate invoices, lien waivers, and any other documents, instruments or things which may be required by the Mortgagee;

(x) The Mortgagee shall have a first lien and security interest in all building materials and completed repair and restoration work and in all fixtures and equipment acquired with such Insurance Proceeds, and the Mortgagor shall execute and deliver such mortgages, deeds of trust, security agreements, financing statements and other instruments as the Mortgagee shall reasonably request to create, evidence, or perfect such lien and security interest; and

(xi) In the event and to the extent such Insurance Proceeds are not required to be used for the repair, restoration and replacement of the Improvements, Equipment and Inventory for which a loss or damage has occurred, or in the event the Mortgagor fails to timely make such election or having made such election fails to timely comply with or is otherwise unable to satisfy the terms and conditions set forth herein, upon five Business Days prior notice to the Mortgagor, the Mortgagee shall be entitled without consent from the Mortgagor to apply such Insurance Proceeds, or the balance thereof, at the Mortgagee's option either (x) to the full or partial payment or prepayment of the Loan Obligations in accordance with Section 2.7 of the Loan Agreement, or (y) to the repair, restoration and/or replacement of all or any part of such Improvements, Equipment and Inventory for which a loss or damage has occurred.

(f) The Mortgagor appoints the Mortgagee to act after an Event of Default as the Mortgagor's attorney-in-fact, coupled with an interest, to cause the issuance of or an endorsement of any policy to bring the Mortgagor into compliance herewith and, as limited above, at the Mortgagee's sole option, to make any claim for, receive payment for, and execute and endorse any documents, checks or other instruments in payment for loss, theft, or damage covered under any such insurance policy; however, in no event will the Mortgagee be liable for failure to collect any amounts payable under any insurance policy.

(g) The Mortgagee shall be entitled at its option to participate in any compromise, adjustment or settlement in connection with any claims for loss, damage or destruction under any policy or policies of insurance, in excess of \$25,000, and the Mortgagor shall within ten Business Days after request therefor reimburse the Mortgagee for all reasonable out-of-pocket expenses (including reasonable attorneys' fees and disbursements) incurred by the Mortgagee in connection with such participation. The Mortgagor shall not make any compromise, adjustment or settlement in connection with any such claim in excess of \$25,000 without the prior written approval of the Mortgagee.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(h) In the event of foreclosure of the lien of this Mortgage or other transfer of title or assignment of the Mortgaged Estate in extinguishment, in whole or in part, of the Loan Obligations, all right, title and interest of the Mortgagor in and to all policies of casualty insurance covering all or any part of the Mortgaged Estate shall inure to the benefit of and pass to the successors in interest to the Mortgagee or the purchaser or grantee of the Mortgaged Estate or any part thereof.

Section 2.06. Impositions.

(a) The Mortgagor shall pay or cause to be paid, before any fine, penalty, interest or cost attaches thereto, all of the Impositions, including, without limitation, any ground rents due under any ground lease agreements, if applicable, as well as all claims for labor, materials or supplies that, if unpaid, might by law become a prior lien on the Mortgaged Estate, and shall submit to Mortgagee such evidence of the due and punctual payment of all such Impositions and claims as may be required by law; provided, however, that if by law any such Imposition may be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), the Mortgagor may pay the same in installments (together with accrued interest on the unpaid balance thereof) as the same respectively become due, before any fine, penalty, interest or cost attaches thereto.

(b) The Mortgagor at its expense may, after prior notice to the Mortgagee, contest by appropriate legal, administrative or other proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien therefor or any claims of mechanics, materialmen, suppliers or vendors or liens thereof, and may withhold payment of the same pending such proceedings if permitted by law, as long as (i) in the case of any Impositions or lien therefor or any claims of mechanics, materialmen, suppliers or vendors or liens thereof, such proceedings shall suspend the collection thereof from the Mortgaged Estate, (ii) neither the Mortgaged Estate nor any part thereof or interest therein will be sold, forfeited or lost if the Mortgagor pays the amount or satisfies the condition being contested, and the Mortgagor would have the opportunity to do so, in the event of the Mortgagor's failure to prevail in the contest, (iii) the Mortgagee would not, by virtue of such permitted contest, be exposed to any risk of any civil liability for which the Mortgagor has not furnished additional security as provided in clause (iv) below, or to any risk of criminal liability, and neither the Mortgaged Estate nor any interest therein would be subject to the imposition of any lien for which the Mortgagor has not furnished additional security as provided in clause (iv) below, as a result of the failure to comply with such law or of such proceeding and (iv) the Mortgagor shall have furnished to the Mortgagee additional security in respect of the claim being contested or the loss or damage that may result from the Mortgagor's failure to prevail in such contest in such amount as may be reasonably requested by the Mortgagee.

(c) The Mortgagor shall fund its Basic Carrying Costs Sub-Account to the extent required pursuant to the Loan Agreement and the real property taxes and assessments

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

applicable to the Facility shall be paid from the relevant Basic Carrying Costs Sub-Account in accordance with the Loan Agreement.

Section 2.07. Maintenance of the Improvements and Equipment. The Mortgagor shall not permit the Improvements or Equipment to be removed or demolished or otherwise altered (provided, however, that the Mortgagor may remove, demolish or alter such Improvements and Equipment that (x) become obsolete in the usual conduct of the Mortgagor's business and the removal or alteration of which do not materially detract from the operation of the Mortgagor's business or (y) to the extent that the aggregate cost of such removal, demolition, or alteration in a consecutive twelve month period does not exceed \$15,000 in the aggregate); shall maintain the Mortgaged Estate in good repair, working order and condition, except for reasonable wear and use; shall not commit or suffer any waste; shall not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Mortgaged Estate or which would or could result in the cancellation of any insurance policy carried with respect to the Mortgaged Estate; and shall, subject to receipt of the Insurance Proceeds or the Condemnation Proceeds, restore and repair the Improvements and Equipment or any part thereof now or hereafter damaged or destroyed by any fire or other casualty or affected by any Taking; provided, however, that if the fire or other casualty is not insured against or insurable, the Mortgagor shall so restore and repair even though no Insurance Proceeds are received.

Section 2.08. Compliance With Laws.

(a) The Mortgagor represents and warrants that the Facility and the Mortgagor's operations at and use of the Facility currently comply in all material respects with all Legal Requirements, and the orders, rules and regulations of the American Insurance Association or any other body now constituted exercising similar functions

(b) The Mortgagor hereby confirms the representations and warranties set forth in Section 4.1(b)(U) of the Loan Agreement (relating to liabilities of the Mortgagor under applicable Environmental Laws) insofar as such representations and warranties apply to the Mortgaged Estate.

(c) The Mortgagor shall notify the Mortgagee promptly of any written notice or order that the Mortgagor receives from any Governmental Authority with respect to the Mortgagor's compliance with any Legal Requirements, including Environmental Laws, relating to the Facility and promptly take any and all actions necessary to bring its operations at the Facility into compliance with such Legal Requirements, including Environmental Laws, (and shall fully comply with the requirements of such Legal Requirements, including Environmental Laws, that at any time are applicable to its operations at the Facility) all to the extent required under the applicable provisions of the Loan Agreement; provided, that, subject to Section 5.1 (D) of the Loan Agreement, the Mortgagor at its expense may, after prior notice to the Mortgagee, contest by appropriate legal, administrative or other proceedings conducted in good faith and with due

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

diligence, the validity or application, in whole or in part, of any such Legal Requirements, including Environmental Laws, as long as (i) neither the Mortgaged Estate nor any part thereof or any interest therein, will be sold, forfeited or lost if the Mortgagor pays the amount or satisfies the condition being contested, and the Mortgagor would have the opportunity to do so, in the event of the Mortgagor's failure to prevail in the contest, (ii) the Mortgagee would not, by virtue of such permitted contest, be exposed to any risk of any civil liability for which the Mortgagor has not furnished additional security as provided in clause (iii) below, or to any risk of criminal liability, and neither the Mortgaged Estate nor any interest therein would be subject to the imposition of any lien for which the Mortgagor has not furnished additional security as provided in clause (iii) below as a result of the failure to comply with such Legal Requirement or Environmental Law or of such proceeding and (iii) the Mortgagor shall have furnished to the Mortgagee additional security in respect of the claim being contested or the loss or damage that may result from the Mortgagor's failure to prevail in such contest in such amount as may be reasonably requested by the Mortgagee.

(d) After 30 days' prior written notice (except in the case of an emergency in which no such prior written notice shall be required) and the Mortgagor's failure to so comply, but subject to subparagraph (c) above, the Mortgagee, at its election and in its sole discretion may (but shall not be obligated to) cure any failure on the part of the Mortgagor to comply with any Legal Requirements, including Environmental Laws, and without limitation, may take any of the following actions:

(i) arrange for the prevention of any Release or threat of Release of Hazardous Substances at the Facility in violation of, or potentially requiring clean up under, Environmental Laws, and pay any costs associated with such prevention;

(ii) arrange for the removal or remediation of Hazardous Substances that may be Released or result from a Release at the Facility in violation of, or potentially requiring clean up under, Environmental Laws, and pay any costs associated with such removal and/or remediation;

(iii) pay, on behalf of the Mortgagor, any costs, fines or penalties imposed on the Mortgagor by any Governmental Authority in connection with such Release or threat of Release of Hazardous Substances in violation of, or potentially requiring clean up under, Environmental Laws; or

(iv) make any other payment or perform any other act intended to prevent a lien in favor of any Governmental Authority from attaching to the Mortgaged Estate.

Any partial exercise by the Mortgagee of the remedies hereinafter set forth, or any partial undertaking on the part of the Mortgagee to cure the Mortgagor's failure to comply with such Legal Requirements, including Environmental Laws, shall not obligate the Mortgagee to complete

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

the actions taken or require the Mortgagee to expend further sums to cure the Mortgagor's noncompliance; nor shall the exercise of any such remedies operate to place upon the Mortgagee any responsibility for the operation, control, care, management or repair of the Facility or make the Mortgagee the "operator" of the Facility within the meaning of any Environmental Laws. Any amount paid or costs incurred by the Mortgagee as a result of the exercise by the Mortgagee of any of the rights hereinabove set forth, together with interest thereon at the Default Rate from the date paid by the Mortgagee, shall be due and payable by the Mortgagor to the Mortgagee within ten days after demand therefor, and until paid shall be added to and become a part of the Loan Obligations secured hereby; and the Mortgagee, by making any such payment or incurring any such costs, shall be subrogated to any rights of the Mortgagor to seek reimbursement from any third parties including, without limitation, a predecessor-in-interest to the Mortgagor's title who may be a "responsible party" or otherwise liable under any Environmental Law in connection with any such Release or threat of Release of Hazardous Substances.

(e) If the Mortgagee reasonably believes that Remedial Work may be required, the Mortgagee may request that an environmental survey and risk assessment with respect to the Mortgaged Estate be prepared and the Mortgagor agrees to supply such a survey and risk assessment by an Independent engineering firm selected by the Mortgagor and satisfactory to the Mortgagee, in form and detail satisfactory to the Mortgagee (including, if the Mortgagee suspects that Remedial Work may be required, test borings of the ground and chemical analyses of air, water and waste discharges), estimating current liabilities and assessing potential sources of future liabilities of the Mortgagor or any other owner or operator of the Facility under applicable Environmental Laws.

(f) The Mortgagor agrees to indemnify, reimburse, defend, and hold harmless the Mortgagee for, from, and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties, consequential damages, reasonable attorneys' fees, disbursements and expenses, and reasonable consultants' fees, disbursements and expenses, including costs of Remedial Work (but excluding internal overhead, administrative and similar costs of the Mortgagee), asserted against, resulting to, imposed on, or incurred by the Mortgagee, directly or indirectly (except and to the extent the same are caused by the Mortgagee's gross negligence or willful misconduct in connection with any of the following:

(i) events, circumstances, or conditions which are alleged to, or do, form the basis for an Environmental Claim;

(ii) the presence, Use or Release of Hazardous Substances at, on, in, under or from any Facility which presence, Use or Release requires or would require Remedial Work;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(iii) any Environmental Claim against Mortgagor, Mortgagee or any Person whose liability for such Environmental Claim the Mortgagor has or may have assumed or retained either contractually or by operation of law; or

(iv) the breach of any representation, warranty or covenant set forth in Section 4.1(b)(U) and Sections 5.1(A),(D) through 5.1(I), inclusive, of the Loan Agreement.

The indemnity provided in this Section 2.08(f) shall not be included in any exculpation of the Mortgagor or its members from personal liability provided in this Mortgage or in any of the other Loan Documents. Nothing in this Section 2.08(f) shall be deemed to deprive the Mortgagee of any rights or remedies provided to it elsewhere in this Mortgage or the other Loan Documents or otherwise available to it under law.

Section 2.09. Limitations of Use. The Facility is used exclusively as a skilled nursing home, congregate care facility, assisted living facility and/or independent living facility and uses ancillary thereto. The Mortgagor shall not, without the prior written consent of the Mortgagee, (a) materially change the use of the Facility or (b) initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof, except as may be necessary in connection with the uses permitted pursuant to this Section 2.09. The Mortgagor shall comply with the provisions of all Leases, licenses, agreements and private covenants, conditions and restrictions that at any time are applicable to the Facility.

Section 2.10. Inspection of the Property. The Mortgagor shall keep adequate records, accounts and books in accordance with GAAP and shall permit the Mortgagee and its authorized representatives to enter the Facility and inspect the Mortgaged Estate and examine the records, accounts and books of the Mortgagor with respect thereto and make copies or extracts thereof all upon reasonable advance notice and at such reasonable times as may be requested by the Mortgagee, subject, however, to the rights of the tenants or occupants of the Facility.

Section 2.11. Actions to Protect Mortgaged Estate. If the Mortgagor shall fail to (a) effect the insurance required by Section 2.05, or (b) make the payments required by Section 2.06, the Mortgagee may, without obligation to do so, and upon notice to the Mortgagor (except in an emergency) effect or pay the same. If the Mortgagor shall fail to perform or observe any of its other covenants or agreements hereunder, the Mortgagee may, without obligation to do so, and upon 30 days' prior written notice to the Mortgagor (except in an emergency) effect the same. To the maximum extent permitted by law, all sums, including reasonable attorneys' fees and disbursements, so expended or expended to sustain the lien or estate of this Mortgage or its priority, or to protect or enforce any of the rights hereunder, or to recover any of the Loan Obligations, shall be a lien on the Mortgaged Estate, shall be deemed to

958C 8477

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

be added to the Loan Obligations secured hereby, and shall be paid by the Mortgagor within ten days after demand therefor, together with interest thereon at the Default Rate.

Section 2.12. Condemnation.

(a) Should the Mortgaged Estate or any part thereof be taken or damaged by reason of a Taking, or should the Mortgagor receive any written notice regarding any such proceeding, the Mortgagor shall give prompt notice thereof to the Mortgagee.

(b) The Mortgagee shall be entitled to receive and collect all Condemnation Proceeds, and all such compensation, awards, damages and other payments or relief, together with all rights and causes of action relating thereto or arising out of any Taking, are hereby assigned to the Mortgagee. The Mortgagor shall execute such further assignments of the Condemnation Proceeds as the Mortgagee may from time to time require. Without limiting the generality of the foregoing, following the occurrence of any Taking involving the Mortgaged Estate or any part thereof, the Mortgagor shall give prompt notice thereof to the Mortgagee and shall cause all Condemnation Proceeds payable as a result of such Taking to be paid to the Mortgagee as additional collateral security hereunder subject to the lien of this Mortgage and applied in accordance with Section 2.13.

(c) Notwithstanding anything to the contrary in paragraph (b) above, the Mortgagee agrees that the Mortgagee shall make the Condemnation Proceeds (other than Condemnation Proceeds in respect of a temporary Taking, which shall be held and disbursed in accordance with Section 2.12(h) of the Loan Agreement) available to the Mortgagor for the Mortgagor's repair, restoration and replacement of the Improvements, Equipment and Inventory affected by the Taking on the following terms and subject to the Mortgagor's satisfaction of the following conditions:

(i) At the time of such Taking and at all times thereafter while the Mortgagee is holding any portion of such Condemnation Proceeds, there shall exist no Default or Event of Default;

(ii) The Improvements, Equipment and Inventory affected by the Taking shall be capable of being restored to their pre-existing condition and utility in all material respects with a value equal to or greater than prior to such Taking and shall be capable of being completed six months prior to the Maturity Date;

(iii) The Mortgagor shall demonstrate to the Mortgagee's reasonable satisfaction the Mortgagor's ability to pay the Loan Obligations relating to the Facility coming due during such restoration period;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(ix) If loss or damage exceeds \$25,000, each disbursement by the Mortgagee of such Condemnation Proceeds shall be funded subject to conditions and in accordance with disbursement procedures which a commercial construction lender would typically establish in the exercise of sound banking practices and shall be made only upon receipt of disbursement requests on an AIA G702/703 form (or similar form approved by the Mortgagee) signed and certified by the Mortgagor and its architect and general contractor with appropriate invoices, lien waivers, and any other documents, instruments or things which may be required by the Mortgagee;

(x) The Mortgagee shall have a first lien and security interest in all building materials and completed repair and restoration work and in all fixtures and equipment acquired with such Condemnation Proceeds, and the Mortgagor shall execute and deliver such mortgages, deeds of trust, security agreements, financing statements and other instruments as the Mortgagee shall reasonably request to create, evidence, or perfect such lien and security interest; and

(xi) In the event and to the extent such Condemnation Proceeds are not required to be used for the repair, restoration and replacement of the Improvements, Equipment and Inventory affected by the Taking, or in the event the Mortgagor fails to timely make such election or having made such election fails to timely comply with or is otherwise unable to satisfy the terms and conditions set forth herein, upon five Business Days prior notice to the Mortgagor, the Mortgagee shall be entitled without consent from the Mortgagor to apply such Condemnation Proceeds, or the balance thereof, at the Mortgagee's option either (x) to the full or partial payment or prepayment of the Loan Obligations in accordance with Section 2.7(a) of the Loan Agreement, or (y) to the repair, restoration and/or replacement of all or any part of such Improvements, Equipment and Inventory affected by the Taking.

(d) The Mortgagee shall be entitled at its option to participate in any compromise, adjustment or settlement in connection with any Taking involving an amount in controversy in excess of \$25,000, and the Mortgagor shall within ten Business Days after request therefor reimburse the Mortgagee for all reasonable out-of-pocket expenses (including reasonable attorneys' fees and disbursements) incurred by the Mortgagee in connection with such participation. The Mortgagor shall not make any compromise, adjustment or settlement in connection with any such claim in excess of \$25,000 without the prior written approval of the Mortgagee.

Section 2.13. Insurance and Condemnation Proceeds. Subject to Section 2.05(e) and Section 2.12(e), Insurance Proceeds and Condemnation Proceeds (collectively, the "Loss Proceeds") not made available to Mortgagor pursuant to such Sections shall be applied in accordance with Section 2.12(h) of the Loan Agreement.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Section 2.14. Leases; Management Agreements. The Mortgagor shall not, without the prior consent and approval of the Mortgagee, enter into, amend or terminate any Leases. Mortgagor shall timely perform all of its obligations under the terms and conditions of any Leases (including ground leases) and shall not accept rent therefor in advance for a period of more than one (1) month. Mortgagor represents that there are no Leases or agreements to lease all or any part of the Mortgaged Estate now in effect, except those specifically set forth in, and assigned to Mortgagee by, the Assignment of Leases. There is no assignment or pledge of any Rents now in effect, except pursuant to the Assignment of Leases. Mortgagor shall not make any assignment or pledge thereof to anyone other than Mortgagee until the Loan Obligations are paid in full. Except to the extent otherwise provided in the Loan Agreement, the Mortgagor shall not, without the prior consent of the Mortgagee, not to be unreasonably withheld or delayed, enter into, amend or terminate any management agreements.

ARTICLE III

Assignment of Rents, Issues and Profits

Section 3.01. Assignment of Rents, Issues and Profits. The Mortgagor does hereby absolutely and unconditionally assign to the Mortgagee the Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by the Mortgagor that this assignment constitutes a present, absolute assignment, and not an assignment for additional security only. Such assignment to the Mortgagee shall not be construed to bind the Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Leases or otherwise impose any obligation upon the Mortgagee. The Mortgagor agrees that further to evidence and reflect the assignment of leases granted herein, Mortgagor shall execute, acknowledge and deliver to Mortgagee assignments of all existing and future Leases of all or any portion of the Mortgaged Estate in form and substance reasonably satisfactory to Mortgagee and shall at the request of Mortgagee, at Mortgagor's expense, record such leases or memoranda thereof and all assignments thereof. Nevertheless, subject to the terms of this Section 3.01, the Mortgagee grants to the Mortgagor a license, revocable as hereinafter provided, to operate and manage the Mortgaged Estate and to collect and use the Rents subject to the requirements of the Loan Agreement. In accordance with Section 2.12(a) of the Loan Agreement, (i) on the Closing Date (and at all times thereafter to but excluding the Prepayment Date), all payments due under the Master Lease for the Facility, except Bonus Rent (as defined in such Master Lease), shall be deposited when due into the Collection Account, and (ii) on and after the Prepayment Date (without Lender's election), or upon the occurrence of an Event of Default (at Lender's election), all rents, revenues or income of any kind derived by the Operator or from such Borrower's Facility within one Business Day of receipt thereof shall be deposited into the Collection Account. Such deposits shall then be transferred into the Cash Collateral Account in accordance with the Loan Agreement. Upon the occurrence of an Event of Default, the license granted to Mortgagor herein shall, at Mortgagee's election, be revoked by the Mortgagee, and the Mortgagee shall immediately be entitled to possession of all Rents in the Collection Accounts and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

the Cash Collateral Accounts and all Rents collected thereafter (including Rents past due and unpaid), whether or not the Mortgagee enters upon or takes control of the Mortgaged Estate. Upon such an election, Mortgagee shall provide Mortgagor with written notice of same. The Mortgagee is hereby granted and assigned by the Mortgagor the right, at its option, upon revocation of the license granted herein, to enter upon the Mortgaged Estate in person, by agent or by court appointed receiver to collect Rents. Any Rents collected after the revocation of the license may be applied by Mortgagee in its sole and absolute discretion toward payment of the Loan Obligations in accordance with Section 2.8 of the Loan Agreement.

ARTICLE IV

Security Agreement

Section 4.01. Security Agreement. This Mortgage creates a lien on and a security interest in the Security Interest Property, and shall constitute a security agreement and "fixture filing" under the UCC or other law applicable to the creation of liens on and security interests in personal property and fixtures. This Mortgage shall constitute a financing statement under the UCC with the Mortgagor as the "debtor" and the Mortgagee as the "secured party". To the extent permitted by law, Mortgagor hereby authorizes Mortgagee to file financing and continuation statements necessary to continue the lien of this Mortgage with respect to the Security Interest Property without the signature of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee as attorney-in-fact (which appointment shall be deemed coupled with an interest) for the purposes of executing and filing such financing and continuation statements.

Section 4.02. Rights Upon Default. If an event of Default occurs, the Mortgagee, in addition to the rights and remedies granted to the Mortgagee by applicable law and this Mortgage, shall have all rights and remedies of a secured party under the UCC. Any notice of sale, disposition or other intended action by the Mortgagee with respect to the Mortgagee's rights under the UCC sent to the Mortgagor in accordance with the notice provision hereof at least ten days prior to such action shall constitute reasonable notice to the Mortgagor. The proceeds of any such sale or disposition, or any part thereof, may be applied by the Mortgagee to the payment of the Loan Obligations in accordance with Section 2.8 of the Loan Agreement.

Section 4.03. Warranties, Representations and Covenants. The Mortgagor hereby warrants, represents and covenants that: (a) the Equipment and Inventory will be kept on or at the Facility and the Mortgagor will not remove any Equipment or Inventory from the Facility, except such portions or items of the Equipment or Inventory that are consumed or worn out in ordinary usage, all of which shall be promptly replaced by the Mortgagor, except as otherwise expressly provided in Section 2.07 with respect to Equipment, (b) all covenants and obligations of the Mortgagor contained herein relating to the Mortgaged Estate shall be deemed to apply to the Equipment and Inventory whether or not expressly referred to herein and (c) this Mortgage

33808477

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

constitutes a security agreement and "fixture filing" as those terms are used in the UCC. Information relative to the security interest created hereby may be obtained by application to the Mortgagee (secured party) c/o Dechert Price & Rhoads, 4000 Bell Atlantic Tower, 1717 Arch Street, Philadelphia, PA 19103, attention: Joseph B. Heil, Esq. The mailing addresses of the Mortgagor and the Mortgagee are set forth on Page 1.

ARTICLE V

Events of Default; Remedies

Section 5.01. Events of Default. The term "Event of Default" wherever used in this Mortgage, shall mean any one of the following events: (a) the occurrence of any "Event of Default" under any of the Loan Documents, including, without limitation, the Loan Agreement and this Mortgage; (b) the occurrence of a default on the part of Mortgagor under any Lease; or (c) the failure of Mortgagor to maintain the insurance required in this Mortgage.

Section 5.02. Acceleration of Maturity. If an Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Mortgagee to exercise such option when entitled to do so shall not be considered as a waiver of such right.

Section 5.03. Default Remedies.

(a) If an Event of Default shall have occurred, this Mortgage may, to the maximum extent permitted by law, be enforced, and the Mortgagee may exercise any right, power or remedy permitted to it hereunder, under the Loan Agreement or under any of the other Loan Documents or by law, and, without limiting the generality of the foregoing, the Mortgagee may, personally or by its agents, to the maximum extent permitted by law:

(i) enter into and take possession of the Mortgaged Estate or any part thereof, exclude the Mortgagor and all Persons claiming under the Mortgagor whose claims are junior to this Mortgage, wholly or partly therefrom, and use, operate, manage and control the same either in the name of the Mortgagor or otherwise as the Mortgagee shall deem best, and upon such entry, from time to time at the expense of the Mortgagor and the Mortgaged Estate, make all such repairs, replacements, alterations, additions or improvements to the Facility or any part thereof as the Mortgagee may deem proper and, whether or not the Mortgagee has so entered and taken possession of the Mortgaged Estate or any part thereof, collect and receive all Rents and apply the same to the payment of all expenses that the Mortgagee may be authorized to make under this Mortgage, the remainder to be applied to the payment of the Loan Obligations until the

95868477
0000081000

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

same shall have been repaid in full; if the Mortgagee demands or attempts to take possession of the Mortgaged Estate or any portion thereof in the exercise of any rights hereunder, the Mortgagor shall promptly turn over and deliver complete possession thereof to the Mortgagee; and

(ii) personally or by agents, with or without entry, if the Mortgagee shall deem it advisable:

(x) [intentionally omitted]

(y) proceed to protect and enforce its rights under this Mortgage, by suit for specific performance of any covenant contained herein or in the Loan Documents or in aid of the execution of any power granted herein or in the Loan Documents, or for the foreclosure of this Mortgage (as a mortgage or otherwise) and the sale of the Mortgaged Estate under the judgment or decree of a court of competent jurisdiction, or for the enforcement of any other right as the Mortgagee shall deem most effectual for such purpose, provided, that in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Estate, this Mortgage shall continue as a lien on, and security interest in, the remaining portion of the Mortgaged Estate; or

(z) exercise any or all of the remedies available to a secured party under the UCC, including, without limitation:

(1) either personally or by means of a court appointed receiver, take possession of all or any of the Security Interest Property and exclude therefrom the Mortgagor and all Persons claiming under the Mortgagor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of the Mortgagor in respect of the Security Interest Property, or any part thereof; if the Mortgagee demands or attempts to take possession of the Security Interest Property in the exercise of any rights hereunder, the Mortgagor shall promptly turn over and deliver complete possession thereof to the Mortgagee;

(2) without further notice to or demand upon the Mortgagor (except those otherwise required hereby or by the Loan Agreement), make such payments and do such acts as the Mortgagee may deem necessary to protect its security interest in the Security Interest Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance that is prior to or superior to the security interest granted

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

hereunder, and in exercising any such powers or authority paying all expenses incurred in connection therewith;

(3) require the Mortgagor to assemble the Security Interest Property or any portion thereof, at a place designated by the Mortgagee and reasonably convenient to both parties, and promptly to deliver the Security Interest Property to the Mortgagee, or an agent or representative designated by it; the Mortgagee, and its agents and representatives, shall have the right to enter upon the premises and property of the Mortgagor to exercise the Mortgagee's rights hereunder;

(4) sell, lease or otherwise dispose of the Security Interest Property, with or without having the Security Interest Property at the place of sale, and upon such terms and in such manner as the Mortgagee may determine (and the Mortgagee may be a purchaser at any such sale); and

(5) unless the Security Interest Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Mortgagee shall give the Mortgagor at least ten days' prior notice of the time and place of any sale of the Security Interest Property or other intended disposition thereof.

(b) If an Event of Default shall have occurred the Mortgagee, to the maximum extent permitted by law, shall be entitled, as a matter of right, to the appointment of a receiver of the Mortgaged Estate, without notice or demand, and without regard to the adequacy of the security for the Loan Obligations or the solvency of the Mortgagor, provided that Mortgagee provides Mortgagor written notice as to the appointment of a receiver simultaneously with such appointment. The Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of the Mortgagee in case of entry and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Estate, unless such receivership is sooner terminated.

(c) In any sale under any provision of this Mortgage or pursuant to any judgment or decree of court, the Mortgaged Estate, to the maximum extent permitted by law, may be sold in one or more parcels or as an entirety and in such order as the Mortgagee may elect, without regard to the right of the Mortgagor or any Person claiming under the Mortgagor to the marshalling of assets. The purchaser at any such sale shall take title to the Mortgaged Estate or the part thereof so sold free and discharged of the estate of the Mortgagor therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Upon the completion of any such sale by virtue of this Section 5.03 the Mortgagee shall execute and deliver to the purchaser an appropriate instrument that shall effectively transfer all of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagor's estate, right, title, interest, property, claim and demand in and to the Mortgaged Estate or portion thereof so sold, but without any covenant or warranty, express or implied. The Mortgagee is hereby irrevocably appointed the attorney-in-fact of the Mortgagor in its name and stead to make all appropriate transfers and deliveries of the Mortgaged Estate or any portions thereof so sold and, for that purpose, the Mortgagee may execute all appropriate instruments of transfer, and may substitute one or more Persons with like power, the Mortgagor hereby ratifying and confirming all that said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Mortgagor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for such purpose, and as may be designated in such request. Any sale or sales made under or by virtue of this Mortgage, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in, to and under the Mortgaged Estate, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all Persons claiming or who may claim the same, or any part thereof, by, through or under the Mortgagor. The powers and agency herein granted are coupled with an interest and are irrevocable.

(d) All rights of action under the Loan Documents and this Mortgage may be enforced by the Mortgagee without the possession of the original Loan Documents and without the production thereof at any trial or other proceeding relative thereto.

Section 5.04. Application of Proceeds.

Prior to the occurrence of an Event of Default, any amounts received or collected by Mortgagee under this Mortgage shall be applied in accordance with Section 2.8 of the Loan Agreement. After the occurrence of an Event of Default, any amounts received or collected by Mortgagee under this Mortgage, including, without limitation, any related Net Proceeds, may be applied to any one or more of the following in such order and in such amounts as Mortgagee may elect in its sole discretion:

(i) To the payment of all costs, expenses and advances incurred by Mortgagee or made by Mortgagee in the enforcement of this Mortgage or the Loan Documents, the protection of the Lien and security afforded thereby, and the preservation of the Mortgaged Estate, including, without limitation, the costs of sale, the payment of any taxes, assessments, insurance premiums and other charges, the costs of any management services, and any attorneys' fees and costs incurred by Mortgagee in obtaining advice in connection with any of the foregoing; and

(ii) To the payment of the Loan Obligations, including, but not limited to, any late charges, accrued and unpaid interest, principal, Default Rate interest, Late Charges and Yield

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Maintenance Premium, if any; and the remainder, if any, shall be paid to the Mortgagor or to the person or entity lawfully entitled thereto.

Notwithstanding the foregoing, in the event that Mortgagee elects to apply amounts received under this Mortgage to reduce Principal Indebtedness, the Principal Indebtedness shall be reduced in accordance with the last sentence of the definition of "Allocated Loan Amount" in the Loan Agreement.

(b) Subject to Section 6.15, no sale or other disposition of all or any part of the Mortgaged Estate pursuant to Section 5.03 shall be deemed to relieve the Mortgagor of its obligations under the Loan Agreement or any other Loan Document except to the extent the proceeds thereof are applied to the payment of such obligations. If the proceeds of sale, collection or other realization of or upon the Mortgaged Estate are insufficient to cover the costs and expenses of such realization and the payment in full of the Loan Obligations, the Mortgagor shall remain liable for any deficiency.

Section 5.05. Right to Sue. Subject to Section 6.15, the Mortgagee shall have the right from time to time to sue for any sums required to be paid by the Mortgagor under the terms of this Mortgage as the same become due without regard to whether or not the Loan Obligations shall be, or have become, due and without prejudice to the right of the Mortgagee thereafter to bring any action or proceeding of foreclosure or any other action upon the occurrence of any Event of Default existing at the time such earlier action was commenced.

Section 5.06. Powers of the Mortgagee. The Mortgagee may at any time or from time to time renew or extend this Mortgage or (with the agreement of the Mortgagor) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release or reconvey any portion of the Mortgaged Estate or any other security, and grant such extensions and indulgences in relation to the Loan Obligations, or release any Person liable therefor as the Mortgagee may determine without the consent of any junior lienor or encumbrancer, without any obligation to give notice of any kind thereto, without in any manner affecting the priority of the lien and estate of this Mortgage on or in any part of the Mortgaged Estate, and without affecting the liability of any other Person (liable) for any of the Loan Obligations.

Section 5.07. Remedies Cumulative.

(a) No right or remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Mortgage, or under applicable law, whether now or hereafter existing; the failure of the Mortgagee to insist at any time upon the strict observance or performance of any of the provisions of this Mortgage or to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

(b) The Mortgagee shall be entitled to enforce payment and performance of any of the obligations of the Mortgagor and to exercise all rights and powers under this Mortgage or under any Loan Document or any laws now or hereafter in force, notwithstanding that some or all of the Loan Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise; neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee, it being stipulated that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee in such order and manner as the Mortgagee, in its sole discretion, may determine; every power or remedy given by the Loan Agreement, this Mortgage or any of the other Loan Documents to the Mortgagee, or to which the Mortgagee is otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Mortgagee, and the Mortgagee may pursue inconsistent remedies.

Section 5.08. Waiver of Stay, Extension, Moratorium Laws; Equity of Redemption. To the maximum extent permitted by law, the Mortgagor shall not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any applicable present or future stay, extension or moratorium law, that may affect observance or performance of the provisions of this Mortgage; nor claim, take or insist upon any benefit or advantage of any present or future law providing for the valuation or appraisal of the Mortgaged Estate or any portion thereof prior to any sale or sales thereof that may be made under or by virtue of Section 5.03; and the Mortgagor, to the extent that it lawfully may, hereby waives all benefit or advantage of any such law or laws. The Mortgagor, for itself and all who may claim under it, hereby waives, to the maximum extent permitted by applicable law, any and all rights and equities of redemption from sale under any foreclosure of this Mortgage and (if an Event of Default shall have occurred) all notice or notices of seizure, and all right to have the Mortgaged Estate marshalled upon any foreclosure hereof. The Mortgagee shall not be obligated to pursue or exhaust its rights or remedies as against any other part of the Mortgaged Estate and the Mortgagor hereby waives any right or claim of right to have the Mortgagee proceed in any particular order.

Section 5.09. Waiver of Homestead. The Mortgagor hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Estate as against the collection of the Loan Obligations, or any part thereof.

Section 5.10. Discontinuance of Proceedings. In case the Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, power of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then in every such case, the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceedings had occurred.

Section 5.11. Illinois Mortgage Foreclosure Law.

(a) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101) (the "Act"), including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) Wherever provision is made in the Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale.

(c) All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(i) all advances by Mortgagee in accordance with the terms of the Mortgage to: (1) preserve or maintain, repair, restore or rebuild the improvements upon the mortgaged real estate; (2) preserve the lien of the Mortgage or the priority thereof; or (3) enforce the Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(ii) payments by Mortgagee of: (1) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (2) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (3) other obligations authorized by the Mortgage; or (4) with court approval, any other amounts in connection with other liens, encumbrances or

95808477

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of the Mortgage as referred to in Sections 1504(d)(2) and 5/15-1510 of the Act; (2) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of the Mortgage or arising from the interest of the Mortgagee hereunder; or (3) in the preparation for the commencement or defense of any such foreclosure or other action related to the Mortgage or the mortgaged real estate;

(v) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(vi) expense deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the Act;

(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) if the Mortgaged Estate of any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (2) if Mortgagor's interest in the Mortgaged Estate is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (3) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Mortgaged Estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Estate or required to be made by the owner of the mortgaged real estate under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners of instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Estate; (6) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Estate is a member in any way affecting the Mortgaged Estate; (7) if the loan secured hereby is a construction loan, costs

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(d) In addition to any provision of the Mortgage authorizing the Mortgagee to take or be placed in possession of the Mortgaged Estate, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Mortgaged Estate or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in the Mortgage, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

(e) Mortgagor acknowledges that the Mortgaged Estate does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. Pursuant to Section 5/15-1601(b) of the Act, Mortgagor hereby waives any and all right to redemption.

ARTICLE VI

Miscellaneous

Section 6.01. Reconveyance by Mortgagee. Upon payment in full of the Loan Obligations or a payment with respect to the Mortgaged Estate which complies with Section 2.11 of the Loan Agreement, the Mortgagee shall release the lien of this Mortgage, or upon the request of the Mortgagor, and at the Mortgagor's expense, assign this Mortgage without recourse to the Mortgagor's designee, or to the Person or Persons legally entitled thereto, by an instrument duly acknowledged in form for recording.

Section 6.02. Notices. All notices, demands, consents, requests or other communications that are permitted or required to be given by any party to the other hereunder shall be in writing and given in the manner specified in Section 8.6 of the Loan Agreement.

Section 6.03. Amendments; Waivers; etc. This Mortgage cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in form for recording, signed by the Mortgagor and the Mortgagee.

Section 6.04. Successors and Assigns. This Mortgage applies to, inure to the benefit of and binds the Mortgagor and the Mortgagee and their respective successors and assigns and shall run with the Land.

Section 6.05. Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties hereto and are not a part of this Mortgage.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Section 6.06. Severability. If any term or provision of this Mortgage or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and enforceable to the maximum extent permitted by law. If any portion of the Loan Obligations shall for any reason not be secured by a valid and enforceable lien upon any part of the Mortgaged Estate, then any payments made in respect of the Loan Obligations (whether voluntary or under foreclosure or other enforcement action or procedure or otherwise) shall, for purposes of this Mortgage (except to the extent otherwise required by applicable law) be deemed to be made (a) first, in respect of the portion of the Loan Obligations not secured by the lien of this Mortgage, (b) second, in respect of the portion of the Loan Obligations secured by the lien of this Mortgage, but which lien is on less than all of the Mortgaged Estate, and (c) last, to the portion of the Loan Obligations secured by the lien of this Mortgage, and which lien is on all of the Mortgaged Estate.

Section 6.07. Indemnity; Expenses. Except for actions by the Mortgagor against the Mortgagee where the Mortgagor is the successful party, the Mortgagor will pay or reimburse the Mortgagee for all reasonable attorneys' fees, costs and expenses incurred by the Mortgagee in any suit, action, legal proceeding or dispute of any kind in which the Mortgagee is made a party or appears as party plaintiff or defendant, affecting the Loan Obligations, this Mortgage or the interest created herein, or the Mortgaged Estate, or any appeal thereof, including, but not limited to, any foreclosure action, or exercise of power of sale, any condemnation action involving the Mortgaged Estate or any action to protect the security hereof, any bankruptcy or other insolvency proceeding commenced by or against the Mortgagor, or any lessee of the Mortgaged Estate (or any part thereof), and any such amounts paid by the Mortgagee shall be added to the Loan Obligations and shall be secured by this Mortgage. The Mortgagor will indemnify, defend and hold the Mortgagee harmless from and against all claims, damages, and expenses, including reasonable attorneys' fees and court costs, resulting from any action by a third party against the Mortgagee relating to this Mortgage or the interest created herein, or the Mortgaged Estate, including, but not limited to, any action or proceeding claiming loss, damage or injury to person or property, or any action or proceeding claiming a violation of or liability under any Legal Requirements, including applicable Environmental Laws, provided the Mortgagor shall not be required to indemnify the Mortgagee for matters directly and solely caused by the Mortgagee's willful misconduct or gross negligence. The Mortgagor acknowledges that it has undertaken the obligation to pay all intangibles taxes and documentary taxes now or hereafter due in connection with the Loan Obligations and the Loan Documents, and the Mortgagor agrees to indemnify and hold the Mortgagee harmless from any intangibles taxes and documentary stamp taxes, and any interest or penalties, which the Mortgagee may hereafter be required to pay in connection with the Loan Obligations or Loan Documents. The agreements of this Section 6.07 shall expressly survive satisfaction of this Mortgage and repayment of the Loan Obligations.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Section 6.08. Estoppel Certificates. The Mortgagor and the Mortgagee each hereby agree at any time and from time to time upon not less than 15 days prior written notice by the Mortgagor and the Mortgagee to execute, acknowledge and deliver to the party specified in such notice, a statement, in writing, certifying that this Mortgage is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications hereto), and stating whether or not, to the best knowledge of such certifying party, any Default or Event of Default has occurred, and, if so, specifying each such Default or Event of Default; provided, however, that it shall be a condition precedent to the Mortgagee's obligation to deliver the statement pursuant to this Section 6.08, that the Mortgagee shall have received, together with the Mortgagor's request for such statement, an Officer's Certificate stating that no Default or Event of Default exists as of the date of such certificate (or specifying such Default or Event of Default).

Section 6.09. Applicable Law. This Mortgage shall be governed by and construed in accordance with the laws of the State in which the Facility is located.

Section 6.10. Limitation of Interest. It is the intent of the Mortgagor and the Mortgagee in the execution of this Mortgage and all other Loan Documents to contract in strict compliance with the usury laws governing the Loan. In furtherance thereof, the Mortgagee and the Mortgagor stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the Maximum Amount. The Mortgagor or any endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the Maximum Amount, and the provisions of this Section 6.10 shall control over all other provisions of the Note and any other Loan Document which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies that are deemed to constitute interest and that would otherwise increase the effective interest rate on the Note to a rate in excess of the Maximum Amount, all such sums deemed to constitute interest in excess of the Maximum Amount shall be applied to the unpaid principal balance of the Note and if in excess of such balance, shall be immediately returned to the Mortgagor upon such determination.

Section 6.11. Assignment. The Mortgagee shall have the right to assign this Mortgage and the obligations hereunder to any Person in accordance with the Loan Agreement. The parties hereto acknowledge that following the execution and delivery of this Mortgage, the Mortgagee may sell, transfer and assign this Mortgage and certain other Loan Documents to trustee in connection with a Securitization. All references to "Mortgagee" hereunder shall be deemed to include the assigns of the Mortgagee including the trustee in any Securitization.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Section 6.12. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of the Mortgagor under this Mortgage, the Note and all other Loan Documents.

Section 6.13. WAIVER OF JURY TRIAL. THE MORTGAGOR AND MORTGAGEE HEREBY WAIVE ANY RIGHT THAT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF MORTGAGOR AND/OR THE MORTGAGEE WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS MORTGAGE OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS MORTGAGE OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH OF THE MORTGAGOR AND MORTGAGEE AGREE THAT THE OTHER MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF THE MORTGAGOR IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF THE MORTGAGEE TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN THE MORTGAGOR AND THE MORTGAGEE SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

Section 6.14. Cross Collateralization. Without limitation to any other right or remedy provided to Mortgagee in this Mortgage or any of the other Loan Documents, Mortgagor represents and covenants that upon the occurrence of an Event of Default (i) Mortgagee shall have the right to pursue all of its rights and remedies in one proceeding or separately and independently in separate proceedings which it, as Mortgagee, in its sole and absolute discretion, shall determine from time to time, (ii) Mortgagee is not required to either marshal assets, sell Collateral in any inverse order of alienation, or be subjected to any "one action" or "election of remedies" law or rule, (iii) the exercise by Mortgagee of any remedies against any Collateral will not impede Mortgagee from subsequently or simultaneously exercising remedies against any other Collateral, (iv) all Liens and other rights, remedies and privileges provided to Mortgagee in the Loan Documents or otherwise shall remain in full force and effect until Mortgagee has exhausted all of its remedies against the Collateral has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Loan, (v) Mortgagor's Facility shall be security for the payment and performance of all obligations of all Borrowers under the Loan Documents and (vi) Mortgagor and the other Borrowers shall be jointly and severally liable for payment of the Indebtedness and for performance of all obligations under the Loan Documents.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Section 6.15. Exculpation. Without limiting the applicability of the terms of any Loan Document to this Mortgage, this Mortgage is and shall be subject to the exculpation provisions of Section 8.14 of the Loan Agreement.

Section 6.16. Exhibits. The information set forth on the cover, heading and recitals hereof, and the Exhibits attached hereto, are hereby incorporated herein as a part of this Mortgage with the same effect as if set forth in the body hereof.

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor as of the day and year first above written.

FAIRVIEW HEALTH CARE PROPERTIES, L.L.C., an Illinois limited liability company

By: FAIRVIEW MANAGEMENT ASSOCIATES, INC., an Illinois corporation, its sole managing member

By: _____

Name:
Title:

35808177

UNOFFICIAL COPY

Property of Cook County Clerk's Office


UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF COOK

)
) ss: _____
)

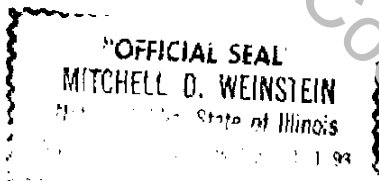
Before me, a notary public in and for said county, personally appeared Eric Rothman, known to me to be the person who as President of FAIRVIEW MANAGEMENT ASSOCIATES, INC., an Illinois corporation, Managing Member on behalf of FAIRVIEW HEALTH CARE PROPERTIES, L.L.C., an Illinois limited liability company, did sign the foregoing instrument and acknowledged the same to be his free act and deed and the free act and deed of said limited liability company. In testimony hereof, I have hereunto ascribed my name this 11th day of November, 1995.



Notary Public

My Commission Expires: 9/21/98

SEAL:



95808477

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION:

LOTS 10 AND 11 IN BLOCK 12 IN WESTMORELAND, A SUBDIVISION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND ALL OF THAT PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 33, LYING EAST OF FIFTH AVENUE (NOW KNOWN AS LAGRANGE ROAD), IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 6, 1926 AS DOCUMENT 9426962.

TAX NUMBER: 15-33-128-010

VOLUME NO.: 175

(AFFECTS LOT 10)

TAX NUMBER: 15-33-128-011

VOLUME NO.: 175

(AFFECTS LOT 11)

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SCHEDULE 1

THE LEASE COLLATERAL CONSISTS OF THE FOLLOWING COLLATERAL WHICH WAS ORIGINALLY GRANTED TO THE MORTGAGOR, AS SECURED PARTY, BY THE OPERATOR, AS DEBTOR, AND THEN ASSIGNED TO LENDER AS ASSIGNEE:

- (a) All Inventory, fixtures, Equipment, Permits, Licenses, General Intangibles, Instruments, Accounts, Leases, Money, Account Collateral, goods and Permitted Investments, now existing or hereafter arising or acquired;
- (b) All present and future contract rights, lease rights, Facility Rents, chattel paper and general intangibles (including trademarks, trade names and patents of Debtor) not otherwise included as collateral under the foregoing;
- (c) All other property necessary to operate the Premises for the Permitted Uses;
- (d) To the extent related to the property described in clauses (a) through (c) above, all books, correspondence, credit files, records, invoices, bills of lading and other documents including, without limitation, to the extent so related, all tapes, cards, computer runs, computer programs and other papers and documents in the possession or control of Debtor or any computer bureau from time to time acting for Debtor and, to the extent so related, all rights in, to and under all policies of insurance, including claims of rights to payments thereunder and proceeds therefrom, including any credit insurance;
- (e) Any other property in which Debtor may create or perfect a security interest; and
- (f) All proceeds and products of any and all of the foregoing.

As used in this schedule, the following terms shall have the meanings set forth below (such meanings to be equally applicable to the singular and plural forms thereof):

"Accounts" means, with respect to the Premises and the Debtor, the Debtor's right to payment for goods sold or leased or for services rendered arising from the ownership or operation of the Facility and not evidenced by an Instrument, including,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

without limitation, the Debtor's rights in and to all accounts and accounts receivable arising from the ownership or operation of such Facility, now existing or hereinafter coming into existence, and all proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible), received from the sale, exchange, transfer, collection or other disposition or substitution thereof. In addition to the foregoing, the term "Accounts" shall include the meaning as such term has in the UCC.

"Account Collateral" means the following property, whether now owned or existing or hereafter acquired or arising and regardless of where located: (a) all of Debtor's right, title and interest in any collection account established pursuant to the Agreement and all Money, if any, from time to time deposited or held in any such collection account; (b) all of Debtor's right, title and interest in any cash collateral account (including all sub-accounts) established pursuant to the Agreement and all Money and Permitted Investments, if any, from time to time deposited or held in any cash collateral account (including all sub-accounts); (c) all interest, dividends, Money, Instruments and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any of the foregoing; and (d) to the extent not covered by the above, all proceeds of any or all of the foregoing.

"Agreement" means that certain Loan Agreement dated as of the Closing Date by and among Secured Party, Debtor and certain other parties thereto.

"Closing Date" means the date upon which the Secured Party makes the Loan pursuant to the Agreement.

"Equipment" means, with respect to the Premises and Debtor, all fixtures, appliances, machinery, furniture, furnishings, decorations, tools and supplies, now owned or hereafter acquired, including but not limited to, all beds, linen, radios, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, restaurant and kitchen equipment, all medical, dental, rehabilitation, therapeutic and paramedic equipment and supplies, any building equipment, including but not limited to, all heating, lighting, incinerating, waste removal and power equipment, engines, pipes, tanks, motors, conduits, switchboards, security and alarm systems, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigeration, ventilating, and communications apparatus, air cooling and air conditioning apparatus, escalators, elevators, ducts, and compressors, materials and supplies, and all other machinery, apparatus, equipment, fixtures and fittings now owned or hereafter acquired by Debtor, or any appurtenances thereto, together with all additions, replacements, parts, fittings, accessions, attachments, accessories, modifications and alterations of any of the foregoing, to the extent relating to the Premises or Debtor. In addition to the foregoing, the term "Equipment" shall include the meaning such term has in the UCC.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

"Facility" means (i) the Land and (ii) all Improvements and Equipment, to the extent same shall be deemed to be fixtures and accessions to the Land.

"Facility Rents" means, to the extent Debtor has any rights, title or interests in or to any of the following, (x) all receipts, rents (whether denoted as advance rent, minimum rent, percentage rent, additional rent or otherwise), issues, income, royalties, profits, revenues, proceeds, bonuses, deposits (whether denoted as security deposits or otherwise), lease termination fees or payments, rejection damages, buy-out fees and any other fees made or to be made in lieu of rent, any award made hereafter to Debtor or the Operator in any court proceeding involving any tenant, lessee, licensee or concessionaire under any of the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, and all other payments, rights and benefits of whatever nature from time to time due under the Leases, including, without limitation, (i) rights to payment earned under any of the Leases for space in the Improvements for the operation of ongoing businesses such as restaurants, news stands, barber shops, beauty shops and pharmacies, and (ii) all other income, consideration, issues, accounts, profits or benefits of any nature arising from the ownership, possession, use or operation of the Facility, including, without limitation, all rights to payment from the Medicare and Medicaid programs or similar state or federal programs, boards, bureaus or agencies and rights to payment from patients or private insurers arising from the operation of the Debtor's Facility and (y) all revenues, receipts, income, receivables and accounts relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, food and beverage facilities, vending machines, telephone and television systems, guest laundry, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System of Accounts for Hotels, 8th Edition, International Association of Hospitality Accountants (1986), as from time to time amended.

"General Intangibles" means, with respect to the Premises and the Debtor, all intangible personal property of the Debtor arising out of or directly relating to the Debtor's Facility (other than Accounts, Facility, Rents, Instruments, Inventory, Money and Permits), including, without limitation, things in action, settlements, judgments, contract rights, rights to performance (including, without limitation, rights under warranties) refunds of real estate taxes and assessments and other rights to payment of Money, copyrights, trademarks and patents now existing or hereinafter in existence. In addition to the foregoing, the term "General Intangibles" shall include the meaning as such term has in the UCC.

"Governmental Authority" means any national or federal government, any state, regional, local or other political subdivision thereof with jurisdiction and any Person with jurisdiction exercising executive, legislative, judicial, regulatory or administrative

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

functions of or pertaining to government.

"Improvements" means, with respect to the Premises and Debtor, all buildings, structures and improvements of every nature whatsoever situated on the Land on the Closing Date or thereafter, including, but not limited to, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, antennas, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to the Land or said buildings, structures or improvements.

"Instruments" means, with respect to the Premises and the Debtor, all instruments, chattel paper, documents or other writings obtained by the Debtor or in connection with the operation of the Debtor's Facility evidencing a right to the payment of Money, including, without limitation, all notes, drafts, acceptances, documents of title, and policies and certificates of insurance, including but not limited to, liability, hazard, rental and credit insurance, guarantees and securities, now or hereafter received by the Debtor or in which the Debtor has or acquires an interest pertaining to the foregoing. In addition to the foregoing, "Instruments" shall include the meaning such term has in the UCC.

"Inventory" means, with respect to the Premises and Debtor, all goods now owned or hereinafter acquired by the Debtor, intended for sale or lease, or to be furnished under contracts of service by Debtor, in connection with the Premises, including without limitation, all inventories held by Debtor, for sale or use at or from the Premises and all other such goods, wares, merchandise, and materials and supplies of every nature held by Debtor, and all such other goods returned to or repossessed by Debtor. In addition to the foregoing, the term "Inventory" shall include the meaning as such term has in Section 9-109 of the UCC.

"Land" means the land described on Exhibit A.

"Leases" means, with respect to Premises and the Debtor, all leases (including, without limitation, any Master Lease) and other agreements or arrangements affecting the use or occupancy of all or any portion of the Premises now in effect or hereafter entered into (including, without limitation, all patient admissions and resident care agreements, lettings, subleases, licenses, concessions, tenancies and other occupancy agreements covering or encumbering all or any portion of the Premises), together with any guarantees, supplements, amendments, modifications, extensions and renewals of the same, and all additional remainders, reversions, and other rights and estates appurtenant thereto.

"Licenses" means, all governmental licenses, permits, regulatory agreements

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

or other approvals or agreements necessary or desirable for the use and operation of the Premises as intended are held by the Debtor and are in full force and effect, including, without limitation, a valid certificate of need ("CON") or similar certificate, license, or approval issued by the DOH for the requisite number of beds, and approved provider status in any approved provider payment program.

"Loan" means that certain loan to be made by Secured Party to the Debtor and, if applicable, other certain parties pursuant to the Agreement.

"Master Lease" means, with respect to the Facility, the Lease between Debtor and the operator of the Facility for the lease of all or a part of the Facility, together with any guarantees, supplements, amendments, modifications, extensions, and renewals of the same and all additional remainders, reversions, and other rights and estates appurtenant thereto.

"Money" means, with respect to the Premises and the Debtor, all moneys, cash, rights to deposit or savings account, credit card receipts or other items of legal tender obtained from or for use in connection with the ownership or operation of the Debtor's Facility.

"Operator" means any operator of the Facility or any tenant under the Master Lease.

"Permits" means, with respect to the Premises and Debtor, all licenses, registration, permits, allocations, filings, authorizations, approvals and certificates used in connection with the ownership, operation, construction, renovation, use or occupancy of the Premises, including, without limitation, building permits, business licenses, state health department licenses, food service licenses, liquor licenses, licenses to conduct business, and all such other permits, licenses and rights, obtained from any Governmental Authority or private Person concerning ownership, operation, renovation, use or occupancy of the Premises.

"Permitted Investments" means any one or more of the following obligations or securities:

- (i) obligations of, or obligations fully guaranteed as to payment of principal and interest by, (x) the United States or any agency or instrumentality thereof provided such obligations are backed by the full faith and credit of the United States of America including, without limitation, obligations of: the U.S. Treasury (all direct or fully guaranteed obligations), the Farmers Home Administration (certificates of beneficial

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ownership), the General Services Administration (participation certificates), the U.S. Maritime Administration (guaranteed Title XI financing), the Small Business Administration (guaranteed participation certificates and guaranteed pool certificates), the U.S. Department of Housing and Urban Development (local authority bonds) and the Washington Metropolitan Area Transit Authority (guaranteed transit bonds); provided, however, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by Standard & Poor's Rating Services, must not have an "r" highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (iv) such investments may not be subject to liquidation prior to their maturity;

(ii) Federal Housing Administration debentures;

(iii) obligations of the following United States government sponsored agencies: Federal Home Loan Mortgage Corp. (debt obligations), the Farm Credit System (consolidated systemwide bonds and notes), the Federal Home Loan Banks (consolidated debt obligations), the Federal National Mortgage Association (debt obligations), the Student Loan Marketing Association (debt obligations), the Financing Corp. (debt obligations), and the Resolution Funding Corp. (debt obligations); provided, however, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by Standard & Poor's Rating Services, must not have an "r" highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such interest rate must be tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (iv) such investments may not be subject to liquidation prior to their maturity;

(iv) federal funds, unsecured certificates of deposit, time deposits, bankers' acceptances and repurchase agreements of any bank, the short term obligations of which are rated in the highest short term rating category by the Rating Agencies; provided, however, that the investments described in this clause must (i) have a predetermined fixed dollar of principal due at maturity that cannot vary or change, (ii) if rated by Standard & Poor's Rating Services, must not have an "r" highlighter affixed to their rating, (iii) if such investments have a variable rate of interest, such

UNOFFICIAL COPY

Property of Cook County Clerk's Office