

UNOFFICIAL COPY

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Cook County Recorder 41.00

THIS INSTRUMENT PREPARED BY
AND UPON RECORDING SHOULD BE
RETURNED TO:

Kelly M. Wrenn, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, NW, Suite 1000 South
Washington, DC 20005-3807

STATE OF ILLINOIS)
COUNTY OF COOK)

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment"), dated as of June 29, 1998, is by HAMPTON PLAZA HEALTH CARE CENTER REAL ESTATE LIMITED PARTNERSHIP, an Illinois limited partnership (hereinafter called the "Assignor"), whose address is 9777 N. Greenwood, Niles, Illinois 60648, for the benefit of GMAC COMMERCIAL MORTGAGE CORPORATION, a California corporation (hereinafter called the "Assignee"), whose address is 650 Dresher Road, PO Box 1015, Horsham, Pennsylvania 19044-8015.

I. RECITALS

This Assignment is made as additional security for a loan by Assignee to Assignor in the principal amount of Fourteen Million Four Hundred Thousand and No/100 Dollars (\$14,400,000.00) (the "Loan") made pursuant to a Loan Agreement by and between Assignor and Assignee (as the same may hereafter be amended, the "Loan Agreement"; all defined terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement) and as security for certain other Loan Obligations (as defined in the Loan Agreement). The Loan is evidenced by a Promissory Note of even date herewith executed and delivered by Assignor to Assignee in said amount (as the same may hereafter be extended, renewed, modified or amended, the "Note"). The Loan is secured in part by the real property more particularly described on Exhibit "A" attached hereto and the improvements located thereon (collectively, the "Property").

II. GRANTING CLAUSES

In consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration and to secure the payment of the Note and any and all renewals, extensions, modifications, and replacements thereof, and to assure performance of the

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agreements contained herein and in the Loan Documents, Assignor hereby assigns to Assignee (to the fullest extent assignable), Assignor's right, title and interest (if any) in:

a. Any and all oral and written leases, including, without limitation, that certain Lease Agreement dated as of April 30, 1997, by and between the Assignor, as lessor, and Hampton Plaza Health Care Center Operations Limited Partnership, an Illinois limited partnership, as lessee (the "Lease"), and other agreements for the use or occupancy made or agreed to by, any person or entity (including, without limitation of the foregoing, Assignor and Assignee under the powers granted herein) and any and all amendments, extensions, renewals, modifications and replacements thereof pertaining to all or any part of the Property, whether such leases or other agreements have been heretofore or are hereafter made or agreed to (such leases and other use and occupancy agreements being collectively referred to herein as the "Leases");

b. The rents, issues and profits and any other payments by any and all lessees under the Leases in addition to rent (collectively, the "Rents") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property;

c. Any and all moneys, awards or other payments made or payable by any and all lessees under the Leases in lieu of rent, including, but not limited to, any damages (all such moneys, awards or payments, including, but not limited to, damages, are collectively referred to herein as the "Damages") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property;

d. All rights, powers, privileges, options and other benefits (collectively, the "Rights") of Assignor under the Leases, including, without limitation of the foregoing:

(i) the immediate and continuing right to receive and collect all insurance proceeds, condemnation awards, moneys and security deposits or the like pursuant to any of the provisions thereof, whether as rents or otherwise (except sums payable directly to any person other than the lessor thereunder);

(ii) the right to make all waivers and agreements, including waivers of obligations of lessees;

(iii) the right to give all notices, permissions, consents and releases, including consent to the subordination of the interest of a lessee;

(iv) the right to take such action upon the happening of a default under the Leases (including the commencement, conduct and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;

(v) the right to do any and all other things whatsoever which Assignor is or may become entitled to under the Leases; and

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(vi) the right to exercise any option required or permitted;

and Assignor authorizes Assignee:

(vii) to manage the Property and let and relet the Property, or any part thereof according to Assignee's own discretion;

(viii) to prosecute or defend any suits in connection with the Property in the name of any or all of Assignee or Assignor as it may consider desirable;

(ix) to enforce or take any other action in connection with the Leases in the name of any or all of Assignee or Assignor;

(x) to make such repairs to the Property as Assignee may deem reasonably advisable; and

(xi) to do anything in or about the Property that Assignee may deem reasonably advisable or that the Assignor has the right or power to do.

TO HAVE AND TO HOLD unto Assignee, its successors and assigns, forever, subject to and upon the terms set forth herein.

Although this instrument constitutes a present assignment of the foregoing Leases, Rights, Rents, Damages, interests and privileges, Assignor shall have the right and license to collect and use all rentals due under the Leases, and, subject to the covenants and restrictions on Assignor contained in Section III and the other paragraphs of this Assignment, to exercise the rights and privileges herein; provided, however, that such license shall be revoked during the pendency of an Event of Default (as herein defined).

III. COVENANTS

3.1 No Other Assignment. Assignor warrants, represents, and covenants that it is the sole owner of the entire lessor's interest in the Leases and has full right to assign the Leases and the Rents due or to become due thereunder, that there has been no previous, and, without Assignee's prior written consent as to form and substance, Assignor will permit no future assignment (as collateral or otherwise) of the Assignor's right, title, and interest in any of the Leases, that the Leases are in full force and effect in accordance with their terms and have not been altered, modified, or amended in any manner whatsoever, except as otherwise disclosed to Assignee, that, to the best of Assignor's knowledge, the lessees are not in default under the Leases and to the best of Assignor's knowledge as of the date hereof, have no defenses, setoffs, or counterclaims against the lessor under the Leases, that no rent reserved in the Leases has been assigned or anticipated, and that no rent for any period subsequent to the date hereof has been collected for more than one (1) month in advance of the time when the said rent becomes or

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would become due under the terms of the Leases except for security deposits and except as otherwise disclosed in writing to Assignee by Assignor.

3.2 **Management.** At all times until this Assignment is released, or until the assignment granted hereby is exercised by Assignee, and at all times thereafter during which Assignee is not in actual or constructive possession of the Property, Assignor shall use all reasonable effort to cause the Property to be managed in accordance with sound business practices and cause to be performed all obligations imposed upon the lessor under the Leases and not do or permit to be done anything to impair the security thereof. Assignor shall not, within the exercise of all reasonable effort, permit any of the Rents to be collected in advance, except that monthly rent due and payable under the Leases may be collected for each current month in advance. Assignor shall not terminate or alter, modify, amend or change in any material manner any of the terms of any of the Leases, or give any consent, concession, or waiver under any of the Leases, or exercise any option available to the lessor under the Leases in the event of casualty damage or condemnation affecting the Property, or accept the surrender thereof or consent to any assignment or subletting under any of the Leases, or convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any or all of the Leases or of any interest therein so as to effect directly or indirectly, promptly or remotely, a merger of the estates and rights of, or a termination or elimination of, the obligations of lessees thereunder, without the prior written consent of the Assignee, which consent will not be unreasonably withheld or delayed. Assignor shall not make any other assignment of any interest in the Leases or the Rents accruing from such Leases or from the Property, or subordinate any of the Leases to any deed of trust, mortgage, or other encumbrance, or permit, consent, or agree to such subordination without the prior written consent of the Assignee, which consent will not be unreasonably withheld. Subject to Assignor's sound business judgment exercised in good faith, Assignor shall cause prompt action, including legal proceedings, for enforcement of any of the Leases and all other remedies available to lessor thereunder to be commenced against any delinquent or defaulting lessee as soon as reasonably necessary to protect such lessor's interest or immediately upon written request from Assignee, and in the event Assignee reasonably requests that such a specific action be taken, to use all reasonable efforts to cause such action to be taken promptly. Assignor shall, but only at the discretion of Assignee, give any consent of lessor under any of the Leases, or exercise any option available to lessor under any of the Leases in the event of casualty or condemnation affecting the Property. Assignor shall execute and deliver, at the reasonable written request of Assignee, all such further assurances and assignments as Assignee from time to time shall require.

3.3 **Execution of Leases.** Assignor shall not permit any Leases to be made hereafter of all or any portion of the Property except with Assignee's prior written consent.

3.4 **Notice of Lessor's Default.** Assignor shall cause notice to be given to Assignee of any notice of default by the lessee under any of the Leases, which default is of a nature which would permit such lessee to terminate such lessee's lease, promptly upon the receipt of notice of such default, but in all events in sufficient time to afford to Assignee an opportunity to cure any

such default prior to the lessee under the subject lease having any right to terminate the lease by reason of such default.

3.5 Assignee to be Creditor of Lessee. To the extent permitted by law, Assignee shall be deemed to be the creditor of each lessee in the Leases in respect of any and all claims for Damages, assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such lessee (without obligation on the part of Assignee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein). Assignor hereby assigns to Assignee any and all Damages and any and all money received in connection with such assignment for the benefit of creditors or in any such bankruptcy, reorganization, insolvency, dissolution or receivership proceedings, with Assignee to receive such Damages and monies and hold them in escrow for the purposes of applying Damages or any money received by Assignee as such creditor in payment of the principal and interest installments secured by or to be paid under the Loan next falling due. To the extent permitted by law, Assignor hereby appoints Assignee as its irrevocable attorney-in-fact to appear in any action and/or collect any such money, award or payment.

IV. DEFAULTS AND REMEDIES

4.1 Defaults. The occurrence of an Event of Default under the Loan Agreement or any of the other Loan Documents shall constitute an Event of Default hereunder.

4.2 Exercise of This Assignment of Leases and Rents.

a. Assignee may exercise the assignment hereby granted upon the occurrence and during the continuation of any Event of Default and pursue its rights to collect the Rents or manage the Property, or both, and otherwise exercise its rights as provided in this Assignment without regard to the adequacy of the security and without waiving any other remedy available to Assignee and without waiving such Event of Default.

b. In the event Assignee elects to invoke any of its rights hereunder, and thereafter for any reason relinquishes to the Assignor such rights, this Assignment shall in no respect be terminated but instead remain in full force and effect until the indebtedness represented by the Note is paid in full, it being the intent of the parties that Assignee, from time to time upon the occurrence of any Event of Default under this Assignment, which Event of Default is continuing, shall have all the rights granted hereby.

4.3 Nature of Remedies. No delay or omission on the part of Assignee in the exercise of any remedy for an Event of Default shall operate as a waiver thereof. The remedies available to Assignee under this Assignment shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the Note and the other Loan Documents. The said remedies shall be cumulative and concurrent, may be pursued separately, successively or together against Assignor or the Property, or either of them, at the sole discretion of Assignee and may be exercised as often as occasion therefor shall arise.

4.4 **Application of Rents.** Assignee shall have the power to apply the Rents and Damages, in such order as Assignee may reasonably determine, to the payment of the indebtedness (in the inverse order of maturity) represented by the Note and the other Loan Documents, including, without limitation, the payment of all advances and reasonable expenses incurred by Assignee under the Mortgage and all reasonable expenses for the care and management of the Property, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing real estate and collecting rents, and the reasonable expenses and fees of all attorneys, agents, and servants, which expenses Assignee may reasonably deem to be necessary to exercise the powers granted to the Assignee hereunder. The receipt by Assignee of any Rents pursuant to this Assignment following an Event of Default and the exercise of any remedies provided for in the Note or the other Loan Documents shall not cure such Event of Default or affect or prejudice the exercise of such remedies.

4.5 **Limitation of Assignee's Obligations.** Assignee's obligations as to any Rents actually collected shall be discharged by application of such Rents for the purposes described in this Assignment. Assignee shall not be liable for uncollected Rents or for any claim for damages or set-offs arising out of Assignee's management of the Property other than for damages arising from Assignee's gross negligence or willful misconduct. Assignee shall not be liable to any lessee under the Leases for the return of any security deposit made under any lease of any portion of the Property unless Assignee shall have received such security deposit from the lessor or such lessee. Assignee shall not by reason of this Assignment or the exercise of any right granted herein be obligated to perform any obligation of the lessor under any of the Leases, nor shall Assignee be responsible for any act committed by the lessor or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making the Assignee a mortgagee in possession of the Property or any part thereof.

4.6 **Reimbursement.** Assignor shall reimburse, indemnify, and hold Assignee harmless for and from any and all reasonable expenses, losses, damages, and liabilities which Assignee may incur (except for any such reasonable expenses, losses, damages and liabilities caused by Assignee's gross negligence or willful misconduct) by reason of this Assignment, or by reason of any of the Leases, or incur in connection with exercising any of the rights granted in this Assignment. Any and all amounts due to Assignee under this Section 4.6 shall be immediately due and payable following written notice to Assignor, and shall be added to the principal amount of the Note and secured by this Assignment and the other Loan Documents.

4.7 **Authorization to Lessees.** Each present and future lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Assignee upon written demand from Assignee stating that an Event of Default has occurred and is continuing under this Assignment without inquiry as to whether any such Event of Default has occurred or whether Assignee is rightfully entitled to such rent.

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V. MISCELLANEOUS

5.1 Modification of Loan Terms. If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, or if the Loan is renewed, modified, or replaced, or if any security for the Loan is released, Assignor and any other parties now or hereafter liable therefor or interested in the Property shall be held to consent to such extensions, renewals, modifications, replacements, and releases, and their liability and the lien hereof and of the other Loan Documents shall not be released and the rights created hereby and thereby shall continue in full force and effect, the right of recourse against all such parties being reserved by Assignee.

5.2 Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon the respective successors and assigns of Assignor and Assignee and all persons and entities (including owners and lessees) which may hereafter obtain any interest in the Property.

5.3 Notices. Whenever notice may appropriately be given under this Assignment, such notice shall be given in accordance with the provisions for notice as set forth in the Section 8.6 of the Loan Agreement.

5.4 Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

5.5 Severability. If any term, restriction, or covenant of this Assignment is deemed illegal or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstances is deemed illegal or unenforceable, the application of such term, restriction, or covenant to any other persons or circumstances shall remain unaffected to the extent permitted by law.

5.6 Termination. The recording of a satisfaction of the Mortgage executed by Assignor to Assignee as security for the Loan by Assignee shall terminate this Assignment; provided, Assignee shall, within ten (10) days after the underlying obligations of the Loan Documents have been paid and satisfied in full, have provided to Assignor, in form acceptable for recordation, an executed and acknowledged certificate of satisfaction or deed of release for the lien of the mortgage of record (and thereby terminating this Assignment).

5.7 Non-Recourse. Notwithstanding anything to the contrary herein, or in any of the other Loan Documents evidencing the Loan, the liability of the Assignor and Assignor's general partner for the payment of principal and interest and agreed charges, and the observance and performance of all of the terms, covenants, and conditions and provisions of the Note and the other Loan Documents, shall be limited to the extent provided in the Note.

5.8 WAIVER OF JURY TRIAL. ASSIGNOR WAIVES ANY RIGHT TO 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 ASSIGNMENT OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF ASSIGNEE AND/OR ASSIGNOR WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS ASSIGNMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS ASSIGNMENT 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. ASSIGNOR AGREES THAT ASSIGNEE MAY FILE A COPY OF THIS ASSIGNMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF ASSIGNOR IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF ASSIGNEE TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN ASSIGNOR AND ASSIGNEE SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

5.9 WAIVER OF AUTOMATIC STAY. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ASSIGNOR HEREBY AGREES THAT, IN CONSIDERATION OF ASSIGNEE'S AGREEMENT TO MAKE THE LOAN AND IN RECOGNITION THAT THE FOLLOWING COVENANT IS A MATERIAL INDUCEMENT FOR ASSIGNEE TO MAKE THE LOAN, IN THE EVENT THAT ASSIGNOR SHALL (I) FILE WITH ANY BANKRUPTCY COURT OF COMPETENT JURISDICTION OR BE THE SUBJECT OF ANY PETITION UNDER ANY SECTION OR CHAPTER OF TITLE 11 OF THE UNITED STATES CODE, AS AMENDED ("BANKRUPTCY CODE"), OR SIMILAR LAW OR STATUTE; (II) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE BANKRUPTCY CODE OR SIMILAR LAW OR STATUTE; (III) FILE OR BE THE SUBJECT OF ANY PETITION SEEKING ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY, OR OTHER RELIEF FOR DEBTORS; (IV) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR; OR (V) BE THE SUBJECT OF AN ORDER, JUDGEMENT OR DECREE ENTERED BY ANY COURT OF COMPETENT JURISDICTION APPROVING A PETITION FILED AGAINST ASSIGNOR FOR ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY OR RELIEF FOR DEBTORS, THEN, SUBJECT TO COURT APPROVAL, ASSIGNEE SHALL THEREUPON BE ENTITLED AND ASSIGNOR HEREBY IRREVOCABLY CONSENTS TO, AND WILL NOT CONTEST, AND AGREES TO STIPULATE TO RELIEF FROM ANY AUTOMATIC STAY OR OTHER INJUNCTION IMPOSED BY SECTION 362 OF THE BANKRUPTCY CODE, OR SIMILAR LAW OR

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STATUTE (INCLUDING, WITHOUT LIMITATION, RELIEF FROM ANY EXCLUSIVE PERIOD SET FORTH IN SECTION 1121 OF THE BANKRUPTCY CODE) OR OTHERWISE, ON OR AGAINST THE EXERCISE OF THE RIGHTS AND REMEDIES OTHERWISE AVAILABLE TO ASSIGNEE AS PROVIDED IN THE LOAN DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND ASSIGNOR HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO OBJECT TO SUCH RELIEF.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the undersigned has caused this Assignment to be executed by its duly authorized representative on the day and year first above written.

ASSIGNOR:

HAMPTON PLAZA HEALTH CARE CENTER
REAL ESTATE LIMITED PARTNERSHIP, an
Illinois limited partnership

WITNESS:

By: JOSH L., INC., an Illinois corporation, its
general partner

Boris S. Behr

Print Name: Boris S. Behr

By: *B. W. Behr* _____ (Seal)

Burton W. Behr
President

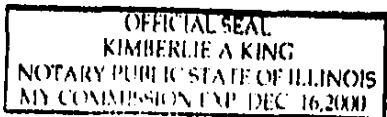
STATE OF ILLINOIS)

COUNTY OF COOK)

TO-WIT:

I HEREBY CERTIFY that on this 26 day of June, 1998, before me, a Notary Public for the state and county aforesaid, personally appeared Burton W. Behr, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, who acknowledged that he has executed the same for the purposes therein set forth, and that the same is his act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.



Kimberlie A. King

Notary Public

My commission expires on 12-16-00

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EXHIBIT A

Legal Description

LOTS 17 THROUGH 22 IN ARTHUR T. MCINTOSH AND COMPANY'S GLENVIEW ACRES BEING A SUBDIVISION OF PART OF LOT 3 IN OWNER'S SUBDIVISION IN SECTION 11, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

9977 GREENWOOD ROAD, NILES, ILL.

Permanent Index Numbers: 09-11-306-005
09-11-306-006
09-11-306-013

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