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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (together with any and all amendments, modifications and supplements, this "Instrument"), is made as of the 9 day of August, 2000, by and between CAPITAL SENIOR LIVING ILM-B, INC., a Delaware corporation ("Mortgagor"), whose address is 14160 Dallas Parkway, Suite 300, Dallas, Texas 75240, Attn: David R. Brickman, and NEWMAN FINANCIAL SERVICES, INC., a Delaware corporation (together with its successors and assigns, "Mortgagee"), whose address is 1801 California Street, Suite 3700, Denver, Colorado 80202.

RECITALS

A. Mortgagee has made a mezzanine loan to CAPITAL SENIOR LIVING P-B, INC., a Delaware corporation ("Borrower"), in the principal amount of Nine Million Seven Hundred and No/100 Dollars (\$9,700,000.00) (the "Loan"), as is evidenced by a certain Promissory Note of even date herewith from Borrower, payable to the order of Mortgagee in installments of principal and/or interest thereon, such final installment being due on August __, 2002.

B. As a wholly-owned subsidiary of Borrower, Mortgagor will materially and directly benefit from the making of the Loan.

C. As a condition precedent to making the Loan, Mortgagee has required that Mortgagor execute this Instrument as security for the Loan and the other Indebtedness (as hereinafter defined).

FOR SENT TO REC. 2000-06-16/18

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GRANTING CLAUSES

NOW, THEREFORE, for and in consideration of the Indebtedness, Mortgagor does hereby irrevocably grant, bargain, sell, convey, assign, transfer, mortgage, pledge and set over unto Mortgagee, its successors and assigns forever, and grants to Mortgagee a security interest in and to, the Mortgaged Property (as hereinafter defined), to secure the prompt payment of the entire Indebtedness, at the times and in the manner stipulated herein, in the Note (as hereinafter defined) and in the other Loan Documents (as hereinafter defined), all without any deduction or credit for taxes or other similar charges paid by Mortgagor and the performance and observation by Mortgagor and all other obligated parties of all and singular the covenants and promises herein, in the Note and in each of the other Loan Documents to be kept, performed, and observed, all without fraud or delay.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns forever, subject however to the terms and conditions herein:

PROVIDED, HOWEVER, that if Borrower shall pay or cause to be paid to Mortgagee the entire Indebtedness, at the times and in the manner stipulated herein, in the Note (as hereinafter defined) and in the other Loan Documents (as hereinafter defined), all without any deduction or credit for taxes or other similar charges paid by Borrower, then this Instrument, and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, terminate and be void, but shall otherwise remain in full force and effect.

AGREEMENT

AND Mortgagor and Mortgagee covenant and agree as follows:

1. **DEFINITIONS.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

- (a) **"1933 Act"** has the meaning given to that term in Section 13.
- (b) **"Accounts"** means any rights of Mortgagor arising from the operation of the Facility to payment for goods sold or leased or for services rendered, not evidenced by an Instrument, including, without limitation, (i) all accounts arising from the operation of the Facility, (ii) all accounts, if any, held by Mortgagee pursuant to this Instrument or any other Loan Document, and (iii) all rights to payment from Medicare or Medicaid programs or similar state or federal programs, boards, bureaus or agencies, and rights to payment from patients, residents, private insurers, and others arising from the operation of the Facility, including rights to payment pursuant to Reimbursement Contracts. Accounts shall include the Proceeds thereof.
- (c) **"Affiliate"** means, with respect to any Person, (a) each Person that controls, is controlled by or is under common control with such Person, (b) each Person that, directly or indirectly, owns or controls, whether beneficially or as a trustee, guardian or other fiduciary, any of

the Stock of such Person, and (c) each of such Person's officers, directors, members, joint venturers and partners.

(d) **"Appurtenant Rights"** means all air rights, development rights, zoning rights, easements, rights-of-way, strips and gores of land, vaults, streets, roads, alleys, tenements, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter appurtenant to, or used or useful in connection with, or located on, under or above, the Land, or any part or parcel thereof, and all ground leases, 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, now or hereafter.

(e) **"Assignment of Leases and Rents"** means that certain Assignment of Leases and Rents of even date herewith executed by Mortgagor to and for the benefit of Mortgagee, together with any and all amendments and modifications thereto.

(f) **"Assignment of Licenses"** means that certain Assignment of Licenses, Permits and Contracts of even date herewith, relating to the Mortgaged Property executed by Mortgagor to and for the benefit of Mortgagee, together with any and all amendments and modifications thereto.

(g) **"Assignment of Proceeds"** means the Assignment of Contracts and Net Proceeds of even date herewith by Mortgagor to and for the benefit of Mortgagee.

(h) **"Bank One"** means Bank One, Texas, N.A. **"Business Day"** means a day, other than Saturday, Sunday or legal holidays, when Mortgagee is open for business.

(i) **"Condemnation"** has the meaning given to that term in Section 12.

(j) **"Contracts"** means all license agreements, operating contracts, and all management, service, employment, supply and maintenance contracts and agreements, and any other agreements, licenses or contracts of any nature whatsoever now or hereafter obtained or entered into by Mortgagor with respect to the acquisition, construction, renovation, expansion, ownership, occupancy, use, operation, maintenance and administration of the Facility and/or the Mortgaged Property, including, without limitation, (i) any and all contracts, authorizations, agreements and/or consents executed by, or on behalf of any patient or resident or other Person seeking services from Mortgagor pursuant to which Mortgagor provides or furnishes services at the Facility, including the consent to treatment and assignment of payment of benefits by third party and (ii) any and all contracts between Mortgagor and any resident of the Facility giving the resident certain rights of occupancy in the Facility and providing for certain services to such resident.

(k) **"Debt Reserve Agreement"** means that certain Debt Reserve Fund and Collateral Pledge Agreement of even date herewith by and between Mortgagor and Mortgagee, together with any and all amendments and modifications thereto.

(l) **"Default Rate"** has the meaning given to that term in the Note.

(m) **"Equipment"** means all beds, linen, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, rehabilitation equipment, restaurant and kitchen equipment, and other fixtures and equipment owned by Mortgagor located on, attached to or used at or in connection with the Mortgaged Property or the Facility and all renewals and replacements thereof and substitutions therefor; provided, however, that with respect to any items which are leased for the benefit of the Facility and not owned by Mortgagor, the Equipment shall include the leasehold interest only of Mortgagor together with any options to purchase any of said items and any additional or greater rights with respect to such items which Mortgagor may hereafter acquire, but the foregoing shall not be construed to mean that such leasing shall be permitted hereunder and under the other Loan Documents.

(n) **"Event of Default"** means the occurrence of any Event of Default as defined in Article VII of the Loan Agreement, including, without limitation, the Events of Default listed in Section 14.

(o) **"Facility"** means the facility described in Exhibit "B" hereto.

(p) **"First Mortgage"** means that certain Mortgage and Security Agreement of even date herewith, executed by Mortgagor for the benefit of First Mortgage Lender, in the aggregate principal amount of the First Mortgage Loan, encumbering the Mortgaged Property, as the same may be amended, modified or supplemented from time to time.

(q) **"First Mortgage Lender"** shall mean GMAC Commercial Mortgage Corporation, a California corporation.

(r) **"First Mortgage Loan"** means individually and collectively those loans in the aggregate amount of \$27,987,270.00 made in connection with the Facility and the other Pool B Facilities (as defined in the Loan Agreement) by the First Mortgage Lender to Borrower on the date hereof as more particularly identified on Exhibit "C" attached hereto.

(s) **"First Mortgage Loan Agreement"** means that certain Loan Agreement of even date herewith by and between Mortgagor and First Mortgage Lender, together with any and all amendments and modifications thereto.

(t) **"First Mortgage Loan Documents"** means, collectively, the "Loan Documents" (as defined in the First Mortgage Loan Agreement) to evidence, secure and guaranty all portions of the First Mortgage Loan, as such documents may be amended, modified or supplemented from time to time.

(u) **"Fixtures"** means all property owned by Mortgagor which is now or hereafter so attached to the Land or the Improvements as to constitute a fixture under applicable law and all renewals and replacements thereof and substitutions therefor, including, without limitation:

machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; and exercise equipment.

(v) **“General Intangibles”** means all intangible personal property owned by Mortgagor arising out of or connected with the Mortgaged Property or the Facility and all renewals and replacements thereof and substitutions therefor (other than Accounts, Rents, Instruments, Inventory, Money, Permits and Reimbursement Contracts), including, without limitation, things in action, contract rights and other rights to payments of Money.

(w) **“Governmental Authority”** means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Land and/or the Improvements or the use, operation or improvement of the Land and/or the Facility.

(x) **“Guarantor”** means Capital Senior Living Corporation, a Delaware corporation.

(y) **“Guaranty Agreement”** means that certain Payment and Performance Guaranty Agreement of even date herewith, from Guarantor to Mortgagee, together with any and all amendments and modifications thereto.

(z) **“Impositions”** and **“Imposition Deposits”** have the meanings given to those terms in Section 4.

(aa) **“Improvements”** means all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including without limitation any future replacements, substitutions and additions thereto, the Facility and all Fixtures which are or shall be attached to the Land or said buildings, structures or improvements.

(ab) **“Indebtedness”** means the aggregate of the principal of and interest on the Note due and owing from time to time and all expenses, charges and other amounts due and owing from time to time under the Note, the Loan Agreement, this Instrument or any other Loan Document, including, without limitation, prepayment premiums, late charges, default interest and advances to protect the security of this Instrument under Section 7, if any.

(ac) **"Instruments"** means all instruments, chattel paper, documents or other writings obtained by Mortgagor from or in connection with the operation of the Mortgaged Property or the construction and operation of the Facility (including without limitation, all ledger sheets, computer records and printouts, data bases, programs, books of account, trademarks or trade names, utility contracts, maintenance and service contracts and files of Mortgagor relating thereto).

(ad) **"Inventory"** means all inventories of food, beverages and other comestibles owned and held by Mortgagor for sale or use at or from the Mortgaged Property or the Facility, and soap, paper supplies, medical supplies, drugs and all other such goods, wares and merchandise held by Mortgagor for sale to or for consumption by residents, guests or patients of the Land or the Facility.

(ae) **"Land"** means the land described in Exhibit "A" attached hereto and incorporated herein.

(af) **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property and/or the Facility, or any portion of the Mortgaged Property and/or the Facility and all modifications, extensions or renewals thereof.

(ag) **"Lien"** means any voluntary or involuntary mortgage, security deed, deed of trust, lien, pledge, assignment, security interest, title retention agreement, financing lease, levy, execution, seizure, judgment, attachment, garnishment, charge, lien or other encumbrance of any kind, including those contemplated by or permitted in this Instrument, the Loan Agreement and the other Loan Documents.

(ah) **"Loan"** has the meaning given to that term in the recitals.

(ai) **"Loan Agreement"** means that certain Mezzanine Loan Agreement of even date herewith by and among Borrower, Mortgagor, and Mortgagee, together with any and all amendments and modifications thereto.

(aj) **"Loan Documents"** means the Note, the Loan Agreement, this Instrument, the Assignment of Leases and Rents, the Assignment of Licenses, the Guaranty Agreement, the Debt Reserve Fund Agreement, the Partnership Pledge Agreement, the Lockbox Agreement and the Subordination Agreement, together with any and all other documents executed by Borrower and Mortgagor or others, evidencing, securing or otherwise relating to the Loan, together with any and all amendments and modifications thereto.

(ak) **"Lockbox Agreement"** means that certain Lockbox-Deposit Account Agreement of even date herewith by and among Mortgagor, Mortgagee and United Texas Bank, together with any and all amendments and modifications thereto.

(al) **"Managed Care Plans"** means any health maintenance organization, preferred provider organization, individual practice association, competitive medical plan, or similar arrangement, entity, organization, or Person.

(am) **"Management Agreement"** means that certain Management Agreement of even date herewith, between Manager and Mortgagor, obligating Manager to operate and manage the Facility.

(an) **"Manager"** means Capital Senior Living, Inc., a Texas corporation, and any successor manager of the Facility approved by Mortgagee in writing, including, subject to Mortgagee's approval in its commercially reasonable discretion, any successor which is an Affiliate of Guarantor.

(ao) **"Medicaid"** means that certain program of medical assistance, funded jointly by the federal government and the States, for impoverished individuals who are aged, blind and/or disabled, and/or members of families with dependent children, which program is more fully described in Title XIX of the Social Security Act (42 U.S.C. §§ 1396 *et seq.*) and the regulations promulgated thereunder.

(ap) **"Medicare"** means that certain federal program providing health insurance for eligible elderly and other individuals, under which physicians, hospitals, skilled nursing homes, home health care, and other providers are reimbursed for certain covered services they provide to the beneficiaries of such program, which program is more fully described in Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 *et seq.*) and the regulations promulgated thereunder.

(aq) **"Money"** means all monies, cash, rights to deposit or savings accounts, or other items of legal tender obtained from or for use in connection with the operation of the Facility.

(ar) **"Mortgaged Property"** means all of Mortgagor's present and future right, title and interest in and to all of the following:

- (i) the Land;
- (ii) all Appurtenant Rights;
- (iii) all Equipment;
- (iv) all Improvements;
- (v) all Fixtures;
- (vi) all Accounts (to the extent assignable under the applicable law);
- (vii) all Contracts;
- (viii) all General Intangibles;
- (ix) all Permits (to the extent assignable);
- (x) all Money;
- (xi) all Instruments;
- (xii) all Inventory;
- (xiii) all Reimbursement Contracts (to the extent assignable under the

- applicable law);
- (xiv) all Rents;
- (xv) all Personalty;
- (xvi) all Leases;
- (xvii) all Proceeds;

(xviii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Mortgagor now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(xix) all Imposition Deposits;

(xx) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);

(xxi) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property; and

(xxii) all renewals, replacements and Proceeds of any of the foregoing and any substitutions therefor.

(as) "Mortgagee" means the entity identified as "Mortgagee" in the first paragraph of this Instrument or any subsequent holder of the Note.

(at) "Mortgagor" means all Persons identified as "Mortgagor" in the first paragraph of this Instrument, together with their respective successors and assigns.

(au) "Note" means the Promissory Note of even date herewith in the principal amount of the Loan payable by Borrower to the order of Mortgagee, together with any and all amendments, supplements and modifications thereto.

(av) "Notice" has the meaning given to that term in Section 24.

(aw) "O&M Program" has the meaning given to such term in the Loan Agreement.

(ax) "Opinion of Counsel" means an opinion or opinions in writing signed by independent legal counsel to Mortgagor and Borrower, designated by Mortgagor and Borrower, and reasonably satisfactory to Mortgagee.

(ay) **"Parent"** means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the corporation.

(az) **"Partnership Pledge Agreement"** means that certain Partnership Interest Pledge and Security Agreement of even date herewith executed by Capital Senior Properties, Inc., a Texas corporation, for the benefit of Mortgagee, together with any and all amendments and modifications thereto.

(ba) **"Permits"** means all licenses, permits and certificates required under applicable federal, state and municipal law in connection with the construction, ownership, operation, use or occupancy of the Mortgaged Property and/or the Facility, including, without limitation, business licenses, state health department licenses, food service licenses, licenses to conduct business, certificates of need and all such other permits, licenses and rights, obtained from any governmental, quasi-governmental or other Person or entity whatsoever concerning ownership, operation, use or occupancy.

(bb) **"Permitted Encumbrances"** has the meaning given to that term in the Loan Agreement.

(bc) **"Person"** means any natural person, firm, trust, corporation, partnership, limited liability company and any other form of legal entity.

(bd) **"Personalty"** means all furniture, furnishings, Equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment which is located at the Facility (hardware and software) and other tangible personal property (other than Fixtures) owned by Mortgagor which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements.

(be) **"Prior Lien"** has the meaning given to that term in Section 26.

(bf) **"Proceeds"** means all awards, payments, earnings, royalties, issues, profits, liquidated claims and proceeds (including proceeds of insurance and condemnation and any conveyance in lieu thereof), whether cash or noncash, moveable or immoveable, tangible or intangible, from the sale, conversion (whether voluntary or involuntary), exchange, transfer, collection, loss, damage, condemnation, disposition, substitution or replacement of any of the Mortgaged Property.

(bg) **"Property Jurisdiction"** means the State, county and any other applicable jurisdiction in which the Mortgaged Property is located.

(bh) **"Reimbursement Contracts"** means all third-party reimbursement contracts relating to the Facility which are now or hereafter in effect with respect to residents or patients qualifying for coverage under the same, including Medicare and Medicaid, Managed Care Plans and private insurance agreements, and any successor program or other similar reimbursement program and/or private insurance agreements, now or hereafter existing.

(bi) **"Rents"** means all rent and other payments of whatever nature from time to time payable pursuant to the Leases (including, without limitation, rights to payments earned under leases for space in the Improvements for the operation of ongoing retail businesses, if any, such as newsstands, barbershops, beauty shops, physicians' offices, pharmacies and specialty shops).

(bj) **"Single-Purpose Entity"** has the meaning given to that term in the Loan Agreement.

(bk) **"Stock"** means all shares, options, warrants, general or limited partnership interests, membership interests, participations or other equivalents (regardless of how designated) in a corporation, limited liability company, partnership or any equivalent entity, whether voting or nonvoting, including, without limitation, common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended).

(bl) **"Subordination Agreement"** means that certain Subordination of Management Agreement of even date herewith by and among Manager, Borrower and Mortgagee, together with any and all amendments and modifications thereto.

(bm) **"Taxes"** means all taxes, assessments and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(bn) **"Transfer"** shall mean the conveyance, assignment, sale, transfer, mortgaging, collateral assignment, encumbrance, pledging, alienation, hypothecation, granting of a security interest in, granting of options with respect to, or other disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) all or any portion of any legal or beneficial interest (i) in all or any portion of the Mortgaged Property, (ii) in the Stock of Borrower, (iii) in the Stock of Mortgagor and (iv) in the Stock of Manager, unless (A) Guarantor continues to hold at least 51% of the shares of voting stock of Manager or (B) the Manager has been replaced by an entity other than an Affiliate of Mortgagor, with Mortgagee's prior consent. The term "Transfer" shall also include, without limitation, the following: an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof or any interest therein for a price to be paid in installments; an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property to one or more Persons pursuant to a single transaction or related transactions, or a sale, assignment or other transfer of, or

the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; any instrument subjecting the Mortgaged Property to a condominium regime or transferring ownership to a cooperative corporation or other form of multiple ownership or governance; the dissolution or termination of Mortgagor or Borrower; the issuance of new Stock in Mortgagor or Borrower; and the merger or consolidation of Mortgagor or Borrower with any other Person.

(bo) "UCC Collateral" has the meaning given to that term in Section 2.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Instrument is also a security agreement under the Uniform Commercial Code as adopted in the Property Jurisdiction for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code as adopted in the Property Jurisdiction, whether acquired now or in the future, and all products and cash and non-cash Proceeds thereof (collectively, "UCC Collateral"), and Mortgagor hereby grants to Mortgagee a security interest in the UCC Collateral. Mortgagor shall execute and deliver to Mortgagee promptly for the filing of such financing statements and any extensions, renewals and amendments thereof, of any termination statements and, upon Mortgagee's request, financing statements, continuation statements and amendments, in such form as Mortgagee may reasonably require to perfect or continue the perfection of this security interest. Mortgagor shall pay all filing costs and all costs and expenses of any record searches for financing statements that Mortgagee may reasonably require. Without the prior written consent of Mortgagee, Mortgagor shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code as adopted in the Property Jurisdiction, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Mortgagee may exercise its remedies against the UCC Collateral separately or together and in any order, without in any way affecting the availability of Mortgagee's other remedies hereunder and/or under applicable law.

3. LEASES. Mortgagor shall not, without the prior written consent and approval of Mortgagee, enter into any Lease (except for admission of Facility patients or residents and except for commercial leases for resident services incidental to the operation of the Facility (i.e., barber shop, beauty parlor), provided such commercial leases, in the aggregate, shall not generate more than 20% of the gross income of the Facility), or enter into or permit any management agreement of or affecting any part of the Mortgaged Property other than the Management Agreement.

4. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.

(a) At any time that tax and insurance deposits are not being collected by the First Mortgage Lender, Mortgagor shall deposit with Mortgagee on the day monthly installments of principal and/or interest, or both, are due under the Note (or on another day designated in writing by Mortgagee), until the Indebtedness is paid in full, an additional amount sufficient to accumulate with Mortgagee the entire sum required to pay at any time that tax and insurance deposits are not being collected by the First Mortgage Lender, when due (i) the premiums for fire and other hazard insurance, business interruption insurance and such other insurance as Mortgagee may require under

the Loan Agreement, (ii) the yearly Taxes, and (iii) amounts for other charges and expenses which Mortgagee at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Mortgagee's interest in the Mortgaged Property, all as estimated from time to time by Mortgagee in its commercially reasonable determination, plus one-sixth of such estimate. The amounts deposited under the preceding sentence are collectively referred to in this Instrument as the "Imposition Deposits". The obligations of Mortgagor for which the Imposition Deposits are required are collectively referred to in this Instrument as "Impositions". Mortgagee shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Mortgagee are held for the purpose of paying property taxes, insurance premiums and each other obligation of Mortgagor for which Imposition Deposits are required. Any waiver by Mortgagee of the requirement that Mortgagor remit Imposition Deposits to Mortgagee may be revoked by Mortgagee, in Mortgagee's discretion, at any time upon notice to Mortgagor. Mortgagee shall provide statements to Mortgagor of the balance of the Imposition Deposits in accordance with applicable law and as reasonably requested by Mortgagor.

(b) Imposition Deposits paid Mortgagee shall be held in an institution (which may be Mortgagee, if Mortgagee is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Mortgagee shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Mortgagee shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Interest on the Imposition Deposits, at Mortgagee's standard rate of interest for such escrow accounts, shall be payable to Mortgagor. Mortgagor hereby pledges and grants to Mortgagee a security interest in the Imposition Deposits, together with the interest thereon, as additional security for all of Mortgagor's obligations under this Instrument and the other Loan Documents. Any amounts deposited with Mortgagee under this Section 4 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Mortgagee for that purpose under Section 4(e).

(c) Mortgagor shall direct the applicable Governmental Authority to deliver the invoices and bills for all Impositions to Mortgagee. At any time that tax and insurance deposits are not being collected by the First Mortgage Lender, if Mortgagee receives a bill or invoice for an Imposition, Mortgagee shall pay, prior to delinquency, the Imposition from the Imposition Deposits held by Mortgagee; provided, however, that Mortgagee shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Mortgagee. Mortgagee may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits, together with interest thereon, held by Mortgagee for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Mortgagee plus one-sixth of such estimate, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits, together with interest thereon, held by Mortgagee for payment of a specific Imposition is less than

the amount reasonably estimated by Mortgagee to be necessary plus one-sixth of such estimate, Mortgagor shall pay to Mortgagee the amount of the deficiency within twenty (20) days after notice from Mortgagee.

(e) If an Event of Default has occurred and is continuing, Mortgagee may apply any Imposition Deposits, together with interest thereon, in any amounts and in any order as Mortgagee determines, in Mortgagee's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, Mortgagee shall refund to Mortgagor any Imposition Deposits, plus undisbursed interest thereon as set forth herein, held by Mortgagee.

5. **APPLICATION OF PAYMENTS.** If at any time Mortgagee receives, from Mortgagor or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Mortgagee may apply that payment to amounts then due and payable in any manner and in the manner set forth in the Note. Neither Mortgagee's acceptance of an amount which is less than all amounts then due and payable nor Mortgagee's application of such payment in the manner authorized in the immediately preceding sentence shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Mortgagor's obligations under this Instrument and the Note shall remain unchanged.

6. **USE OF PROPERTY.** Unless required by applicable law, Mortgagor shall not (a) except for any change in use approved by Mortgagee, allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, (b) convert any part of the Facility to commercial use, other than pursuant to any commercial leases permitted under Section 3 above, or (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property.

7. **PROTECTION OF MORTGAGEE'S SECURITY.**

(a) If Mortgagor fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to adversely affect the Mortgaged Property, Mortgagee's security or Mortgagee's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws (as defined in the Loan Agreement), fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then, subject to the prior rights of the First Mortgage Lender under the First Mortgage Loan Documents, Mortgagee at Mortgagee's option and upon notice to Mortgagor may make such appearances, disburse such sums and take such actions as Mortgagee reasonably deems necessary to perform such obligations of Mortgagor and to protect Mortgagee's interest. Mortgagee will use best efforts to provide notice to Mortgagor prior to taking such actions; provided, however, that failure to provide such notice will not adversely affect Mortgagee's rights hereunder.

(b) Any amounts disbursed by Mortgagee under this Section 7, or under any other provision of this Instrument, or under any of the other Loan Documents, that treats such

disbursement as being made under this Section 7, shall be added to, and become part of the Indebtedness, shall be immediately due and payable upon receipt by Mortgagor of notification of the amounts expended, and shall bear interest from the date of disbursement until paid at the Default Rate (as defined in the Note).

(c) Nothing in this Section 7 shall require Mortgagee to incur any expense or take any action.

8. INSPECTION. Mortgagee, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time, upon reasonable advance written notice to Mortgagor except in an emergency or during the continuance of an Event of Default in which event no advance notice needs to be given.

9. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Sections 4, 9(c) and 9(d), Mortgagor shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Sections 4 and 9(c), Mortgagor shall pay or cause to be paid the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added or lien imposed.

(c) As long as no Event of Default has occurred and is continuing, Mortgagor shall not be obligated to pay directly Taxes, insurance premiums or any other individual Imposition to the extent that Imposition Deposits are held by Mortgagee for the purpose of paying that specific Imposition. If an Event of Default exists, Mortgagee may exercise any rights Mortgagee may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable.

(d) Mortgagor, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (i) Mortgagor notifies Mortgagee of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, as determined by Mortgagee, (iii) if reasonably requested by Mortgagee, Mortgagor deposits with Mortgagee cash reserves or other collateral which, together with Imposition Deposits made relating to the Imposition being contested, are sufficient to pay the contested Imposition, (iv) Mortgagor furnishes whatever other security is required in the proceedings or is reasonably requested by Mortgagee, which may include the delivery to Mortgagee of any reserves established by Mortgagor to pay the contested Imposition, as additional security, and (v) such contest operates to suspend enforcement of such Imposition.

(e) Mortgagor shall promptly deliver to Mortgagee a copy of all notices of, and invoices for, Impositions, and if Mortgagor pays any Imposition directly, Mortgagor shall promptly furnish to Mortgagee receipts evidencing such payments.

(f) In the event of the passage of any law subsequent to the date of this Instrument in any manner changing or modifying the laws now in force governing the taxation of deeds of trust or mortgages or debts secured by deeds of trust or mortgages or the manner of collecting any such taxes so as to adversely affect Mortgagee (including, without limitation, a requirement that internal revenue stamps be affixed to this Instrument or any of the other Loan Documents), Mortgagor will promptly pay any such tax. If Mortgagor fails to make such prompt payment, or if any law prohibits Mortgagor from making such payment or would penalize Mortgagee if Mortgagor makes such payment, then the entire unpaid balance of the Indebtedness shall, without notice, immediately become due and payable at the sole option of Mortgagee. In no event, however, shall any income taxes of Mortgagee or franchise taxes of Mortgagee measured by income, or taxes in lieu of such income taxes or franchise taxes, be required to be paid by Mortgagor.

10. **LIENS; ENCUMBRANCES.** Mortgagor acknowledges that the existence of any Lien on the Mortgaged Property, other than Permitted Encumbrances, whether voluntary, involuntary or by operation of law, is a "Transfer", and will be an Event of Default under the Loan Agreement.

11. **PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.** Mortgagor (a) shall not commit waste, or permit material impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Facility, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, except Mortgagor shall not be required to restore or repair the Mortgaged Property to the extent Mortgagee applies such insurance proceeds or condemnation awards to reduce the Indebtedness, (d) shall keep the Mortgaged Property in good repair, reasonable wear and tear excepted, including the replacement of Personalty and Fixtures with items of equal or better function and quality, (e) shall provide for professional operation or management of the Mortgaged Property by an operator or manager satisfactory to Mortgagee, in its sole and absolute discretion, under a contract approved by Mortgagee in writing (Mortgagor hereby approves the Management Agreement), and (f) shall give notice to Mortgagee of and, unless otherwise directed in writing by Mortgagee, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Mortgagee's security or Mortgagee's rights under this Instrument. Mortgagor shall not (and shall not permit any other Person to) remove, demolish or alter in any material way the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty.

12. CONDEMNATION.

(a) Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"). Mortgagor shall appear in and prosecute or defend any proceeding relating to any Condemnation unless otherwise directed by Mortgagee in writing. If an Event of Default has occurred and is continuing, subject to the prior rights of the First Mortgage Lender under the First Mortgage Loan Documents, Mortgagor authorizes and appoints Mortgagee as attorney-in-fact for Mortgagor to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 12 shall require Mortgagee to incur any expense or take any action. Mortgagor hereby transfers and assigns to Mortgagee, subject to the prior rights of the First Mortgage Lender under the First Mortgage Loan Documents, all right, title and interest of Mortgagor in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Subject to the provisions of Section 4.6 of the Loan Agreement and the prior rights of the First Mortgage Lender under the First Mortgage Loan Documents, Mortgagee, in its sole discretion, may apply such awards or proceeds, after the deduction of Mortgagee's expenses incurred in the collection of such amounts, at Mortgagee's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Mortgagor. Unless Mortgagee otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note or Section 4 of this Instrument, or change the amount of such installments. Mortgagor agrees to execute such further evidence of assignment of any awards or proceeds as Mortgagee may reasonably require.

13. TRANSFERS OF THE MORTGAGED PROPERTY OR BENEFICIAL INTERESTS IN MORTGAGOR.

(a) Except as otherwise permitted under this Section 13, Transfers shall not be permitted without Mortgagee's prior written consent which may be withheld by Mortgagee in its sole discretion. Notwithstanding any provision of this Section to the contrary, in no event shall a Transfer resulting in a change in control of Mortgagor or the Mortgaged Property be permitted without Mortgagee's prior written consent, which may be granted or denied in Mortgagee's sole, absolute and unreviewable discretion.

(b) Subject to the provisions of Section 13(c) below, the following Transfers shall be permitted, provided that (i) no such Transfer (in a series of one or more transactions) shall result in a change in control of Mortgagor, (ii) in no event shall Mortgagor cease to be a Single-Purpose

Entity, and (iii) in no event shall any such Transfer result in the dissolution or termination of Mortgagor:

(1) Transfers of Stock in Mortgagor to an Affiliate of Guarantor, to be approved by Mortgagee in its commercially reasonable discretion; and

(2) the Transfer, one time only during the term of the Loan, of the Mortgaged Property to a third-party Single Purpose Entity transferee and the assumption of the Loan by such transferee, subject to Mortgagee's prior written approval.

(c) Notwithstanding any provision herein to the contrary, no Transfer otherwise permitted under this Section 13 shall occur unless Mortgagor shall have given Mortgagee not less than ten (10) Business Days prior notice of the intended Transfer together with a certificate of a financial officer of Mortgagor stating (i) the nature and size of the interest to be the subject of the Transfer, (ii) the name and address of the Person to which such interest shall be conveyed, sold or transferred unless such interest is to be conveyed, sold or transferred pursuant to a registered public sale pursuant to applicable securities laws, and (iii) that the proposed transaction is a bona fide sale, transfer or conveyance solely for cash or equivalent consideration, if applicable. Mortgagee reserves the right to condition any consent required pursuant to this Section 13 with respect to a Transfer upon (A) the payment of all expenses incurred by Mortgagee as set forth below and, in connection with the Transfer of any fee interest in the Mortgaged Property and assumption of the Loan, an assumption fee equal to one percent (1%) of the outstanding balance of the Loan (the "Assumption Fee"), (B) Mortgagee's approval of the financial condition, managerial capabilities and ownership structure of the proposed transferee, including requiring that the transferee of any fee interest in the Mortgaged Property be a Single-Purpose Entity (and in no event may the proposed transferee be a non-United States entity), (C) if the Transfer shall result in a change in control of Mortgagor or the Mortgaged Property, the modification of the Loan Documents, the execution of an assumption agreement by the proposed transferee, in form and content acceptable to Mortgagee, and the assumption of the Loan Documents, as modified, by the proposed transferee, (D) the Loan being in good standing and free from any default, (E) if required by Mortgagee, receipt of an Opinion of Counsel reasonably satisfactory to Mortgagee stating, without limitation, that if effected, the proposed Transfer would have no effect on the enforceability of this Instrument or the other Loan Documents, would not result in the substantive consolidation by a bankruptcy court of the assets and liabilities of the proposed transferee with the assets and liabilities of Mortgagor and such other entities as Mortgagee may specify, and would not result in the dissolution or termination of Mortgagor, (F) the approval of the proposed transferee by any rating agency reasonably required by Mortgagee and (G) such other conditions as Mortgagee may reasonably require at the time consent is sought. Mortgagor agrees to pay on demand all expenses (including, without limitation, reasonable attorney's fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any Transfer. With respect to a Transfer of any interest in the Mortgaged Property under Section 13(b)(2) above, each request by Mortgagor for approval by Mortgagee shall be accompanied by a \$5,000.00 non-refundable review fee paid to Mortgagee in cash which will be credited to the Assumption Fee if the Transfer is approved. If the Transfer is not approved, the review fee will be

retained by Mortgagee. In no event shall any Transfer otherwise permitted under this Section occur if such Transfer is required to be registered under the Securities Act of 1933, as amended (the "1933 Act"), or any state securities or Blue Sky laws, or offered pursuant to Rule 144A under the 1933 Act.

14. EVENTS OF DEFAULT. The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

(a) the failure by Borrower to pay any installment of principal, interest or other payments required under the Note, this Instrument or any other Loan Document within five (5) days after the same becomes due;

(b) any failure by Mortgagor to comply with the provisions of Section 25 of this Instrument;

(c) fraud or intentional misrepresentation or intentional omission by Borrower, Mortgagor or any guarantor of all or any part of the Indebtedness or any of their respective officers, directors or trustees in connection with (i) the application for or creation of the Indebtedness, (ii) any financial statement, financial report, certification, or other report or information required under the Loan Agreement to be provided to Mortgagee during the term of the Indebtedness, or (iii) any request for Mortgagee's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

(d) a failure of Mortgagor to comply with the provisions of Section 13;

(e) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Mortgagee's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Mortgagee's interest in the Mortgaged Property;

(f) any failure by Mortgagor properly and timely to perform or observe any covenant or condition under this Instrument (other than those specified in this Section 14 hereof and other than those specified in Section 7.1 of the Loan Agreement), the Commitment Letter or any other Loan Document which failure is not cured within any applicable cure period as set forth herein or in such other Loan Document or, if no cure period is specified therefor, is not cured within thirty (30) days after notice of such failure by Mortgagee to Mortgagor; provided, however, that if such failure cannot be cured within such thirty (30) day period, then such cure period shall be extended for such period of time as Lender deems reasonably necessary as long as Mortgagor is diligently and in good faith prosecuting such cure to completion. However, no such notice or grace period shall apply in the case of any such failure which could, in Mortgagee's judgment, absent immediate exercise by Mortgagee of a right or remedy under this Instrument, result in any material respect in harm to Mortgagee, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(g) any exercise by the holder of any debt instrument (other than the Mortgagor and the holder of the Mezzanine Financing) secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable; or

(h) the Mortgaged Property becomes part of a bankrupt debtor's (other than the Mortgagor, the Borrower, the Guarantor or any Manager of the Facility which is an Affiliate of the Mortgagor) estate pursuant to any chapter of the Federal Bankruptcy Code or the Mortgaged Property otherwise becomes subject to any reorganization, receivership (other than a receivership proceeding instituted by Mortgagee) or insolvency proceeding or any similar proceeding pursuant to any federal, state or foreign law affecting debtor and creditor rights, and, in the case of an involuntary bankruptcy, the Mortgaged Property is not removed from such bankruptcy's debtor's estate within ninety (90) days from the date of the filing thereof or, if a trustee, receiver or liquidator of all or any substantial part of the Mortgaged Property has been appointed, such appointment is not vacated or stayed within ninety (90) days after the date of such appointment.

15. REMEDIES.

(a) Acceleration of Maturity. If an Event of Default shall have occurred and is continuing, then the entire Indebtedness shall, at the option of Mortgagee, immediately become due and payable without notice or demand, time being of the essence of this Instrument, and no omission on the part of Mortgagee to exercise such option when entitled to do so shall be construed as a waiver of such right.

(b) Right to Enter and Take Possession.

(i) If an Event of Default shall have occurred and is continuing, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Mortgaged Property and, if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Mortgaged Property without the appointment of a receiver or an application therefor, and may exclude Mortgagor and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Mortgagor relating thereto;

(ii) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Mortgagee, Mortgagee may obtain a judgment or decree conferring upon Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Mortgaged Property to Mortgagee. Mortgagor will pay to Mortgagee, upon demand, all expenses of obtaining such judgment or decree, including costs and expense incurred by Mortgagee, its attorneys and agents, and all such expenses and costs shall, until paid, become part of the Indebtedness and shall be secured by this Instrument;

(iii) Upon every such entering or taking of possession, Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business

thereof, and, from time to time (A) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional necessary Fixtures, Personalty and Equipment; (B) insure or keep the Mortgaged Property insured; (C) manage and operate the Mortgaged Property and exercise all of the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name; and/or (D) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Mortgagee, all as Mortgagee from time to time may determine to be in its best interest. Mortgagee may collect and receive all the Rents, including those past due as well as those accruing thereafter, and, after deducting (1) all expenses of taking, holding, managing and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (2) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (3) the cost of such insurance deemed necessary by Mortgagee; (4) such taxes, assessments and other similar charges as Mortgagee may at its option pay; (5) other necessary and proper charges upon the Mortgaged Property or any part thereof; and (6) the actual fees, expenses and disbursements of the attorneys and agents of Mortgagee, Mortgagee shall apply the remainder of the monies and proceeds so received by Mortgagee, first, to the payment of accrued interest; second, to the payment of Imposition Deposits and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal and any other unpaid Indebtedness then due. Anything in this Section to the contrary notwithstanding, Mortgagee shall not incur any liability as a result of any exercise by Mortgagee of its rights under this Instrument, and Mortgagee shall be liable to account only for the Rents actually received by Mortgagee;

(iv) If an Event of Default shall exist, Mortgagee may require that Mortgagor cause all of its Accounts, to the extent assignable under applicable law, to be paid to one or more deposit accounts with Mortgagee, or at Mortgagee's option, with another financial institution approved by Mortgagee. Mortgagor assigns and grants to Mortgagee a security interest in, pledge of and right of setoff against all moneys from time to time held in such deposit accounts, to the extent permitted by applicable law. Mortgagor agrees to promptly notify all of its account debtors, including the Medicaid and Medicare agencies and other account debtors pursuant to all Reimbursement Contracts, to the extent permitted under applicable law and to the extent Mortgagor maintains such accounts, to make payments to one or more such deposit accounts upon Mortgagee's request and as designated by Mortgagee, and Mortgagor agrees to provide any necessary endorsements to checks, drafts and other forms of payment so that such payments will be properly deposited in such accounts. Mortgagee may require that the deposit accounts be established so as to comply with any applicable Medicaid, Medicare and other requirements applicable to payments of any accounts receivable. Mortgagee may cause moneys to be withdrawn from such deposit accounts and applied to the Indebtedness in such order as Mortgagee may elect, whether or not then due. Mortgagor appoints Mortgagee as Mortgagor's attorney-in-fact, which appointment is coupled with an interest and is irrevocable to provide if an Event of Default exists, any notice, endorse any check, draft or other payment for deposit, or take any other action which Mortgagor agrees to undertake in accordance with this Section. Mortgagee shall not be liable for failure to collect or to enforce any Accounts or for any action or omission on the part of Mortgagee, its officers, agents and employees in collecting or enforcing such Accounts;

(v) Whenever all the Indebtedness shall have been paid and all Events of Default shall have been cured, Mortgagee shall surrender possession of the Mortgaged Property to Mortgagor, its successors and/or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

(c) Performance by Mortgagee. Upon the occurrence of an Event of Default, and during the continuance thereof, Mortgagee may, at its sole option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Mortgagee in connection therewith, with interest thereon at the Default Rate (as defined in the Note) or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee. Notwithstanding anything to the contrary herein, Mortgagee shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

(d) Receiver. If any Event of Default shall have occurred and be continuing, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the sufficiency or value of any security for the Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Facility and to collect and apply the Rents. The receiver shall have all the rights and powers permitted under the laws of the Property Jurisdiction. Mortgagor will pay unto Mortgagee upon demand all expenses, including receiver's fees, actual attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section, and upon any Mortgagor's failure to pay the same, any such amounts shall be added to the Indebtedness and shall be secured by this Instrument.

(e) Mortgagee's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term thereof or any other right, (ii) to foreclose this Instrument and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by applicable law of the Property Jurisdiction, and (iii) to pursue any other remedy available to it, all as Mortgagee shall deem most effectual for such purposes. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Mortgagee may determine. In addition, if any Event of Default shall have occurred and be continuing, Mortgagee may exercise any and all of the remedies applicable as enforceable under the applicable law of the Property Jurisdiction.

(f) Purchase by Mortgagee. Upon any foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

(g) Application of Proceeds of Sale. In the event of a real property foreclosure or sale or foreclosure under the Uniform Commercial Code adopted in the Property Jurisdiction or other sale of all or any portion of the Mortgaged Property, the proceeds of said sale shall be applied,

first, to the expenses of such sale and of all proceedings in connection therewith, including actual and reasonable attorney's fees and expenses (which attorney's fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, Impositions and charges, including utility charges and any other amounts advanced by Mortgagee hereunder, and interest thereon; then to payment of the Indebtedness in such order of priority as Mortgagee shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Mortgagor, or to the person or entity lawfully entitled thereto.

(h) Mortgagor as Tenant Holding Over. In the event of any such real property foreclosure sale, Mortgagor, if Mortgagor shall remain in possession, shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable thereto.

(i) Waiver of Appraisalment, Valuation, Etc. Mortgagor agrees, to the full extent permitted by law, that in case of an Event of Default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will assert, claim or seek to take advantage of any appraisalment, marshalling, redemption, valuation, stay, homestead, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement of foreclosure of this Instrument, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale.

(j) Discontinuance of Proceedings. In case Mortgagee shall have proceeded to enforce any right, power or remedy under this Instrument by foreclosure, 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, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred.

(k) Waiver.

(i) No delay or omission by Mortgagee or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Instrument to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. No consent or waiver expressed or implied by Mortgagee to or of any breach or default by Mortgagor in the performance of the obligations of Mortgagor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of Mortgagee to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Mortgagee of its rights hereunder or impair any rights, powers or remedies of Mortgagee hereunder.

(ii) No act or omission by Mortgagee shall release, discharge, modify, change or otherwise affect the original liability under the Note, this Instrument, other Loan Documents or any other obligation of Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then existing or of any subsequent default, nor alter the lien of this Instrument, except as expressly provided in an instrument or instruments executed by Mortgagee. Without limiting the generality of the foregoing, Mortgagee may (A) grant forbearance or an extension of time for the payment of all or any portion of the Indebtedness; (B) take other or additional security for the payment of any of the Indebtedness; (C) waive or fail to exercise any right granted herein, in the Note or in other Loan Documents; (D) release any part of the Mortgaged Property from the security interest or lien of this Instrument or otherwise change any of the terms, covenants, conditions or agreements of the Note, this Instrument or other Loan Documents; (E) consent to the filing of any map, plat or replat affecting the Land; (F) consent to the granting of any easement or other right affecting the Mortgaged Property; (G) make or consent to any agreement subordinating the security title or lien hereof, or (H) take or omit to take any action whatsoever with respect to the Note, this Instrument, the other Loan Documents, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to this Instrument, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Mortgagee from exercising any such right, power or privilege with respect to the lien of this Instrument. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Mortgagee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with respect to the Mortgaged Property or the Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings of Mortgagor, any guarantor of the Indebtedness or others.

(iii) Mortgagor waives and relinquishes any and all rights it may have, whether at law or equity, to require Mortgagee to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular state or other jurisdiction. Mortgagor expressly waives and relinquishes any and all rights and remedies that Mortgagor may have or be able to assert by reason of the laws of the state of jurisdiction pertaining to the rights and remedies of sureties.

Mortgagor makes these arrangements, waivers and relinquishments knowingly and as a material inducement to Mortgagee in making the Loan, after consulting with and considering the advice of independent legal counsel selected by Mortgagor.

(l) Suits to Protect the Mortgaged Property. Mortgagee shall have power to institute and maintain such suits and proceedings as it may reasonably deem expedient (i) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or constitute an Event of Default under this Instrument; (ii) to preserve or protect its interest in the Mortgaged Property and in the Rents arising therefrom; and (iii) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or

otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of Mortgagee.

(m) **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its properties, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the entire amount due and payable by Mortgagor under this Instrument at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

(n) **Actions Without Mortgagor's Consent.** Mortgagor agrees that Mortgagee may do any one or all of the following without notice to or the consent of Mortgagor and without affecting Mortgagee's rights or remedies against Mortgagor: (i) accept partial payment of, compromise, settle, renew, extend the time for payment or performance of, or refuse to enforce any of Mortgagor's Indebtedness to Mortgagee under or in connection with this Instrument or any of the other Loan Documents; (ii) grant any indulgence or forbearance to Guarantor or any other Person under or in connection with any or all of the Loan Documents; (iii) release, waive, substitute or add any or all collateral securing payment of any or all of the Indebtedness; (iv) release, substitute or add any one or more endorsers or guarantors of any or all of the Indebtedness; and (v) after the occurrence of an Event of Default under this Instrument or the Loan Agreement, and at such other times as Mortgagee is so entitled under the Loan Documents, exercise any right or remedy with respect to the Indebtedness or any collateral securing the Indebtedness, notwithstanding any effect on or impairment of Mortgagor's subrogation, reimbursement or other rights against Guarantor or any other Person under or in connection with any or all of the Loan Documents.

16. **REMEDIES CUMULATIVE.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

17. **FORBEARANCE.**

(a) Mortgagee may agree with Mortgagor, from time to time, at Mortgagee's option and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of any guarantor or other third party obligor, extend the time for payment of all or any part of the Indebtedness, reduce the payments due under this Instrument, the Note, or any other Loan Document, release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document, accept a renewal of the Note, modify the terms and time of payment of the Indebtedness, join in any extension or subordination agreement, release any Mortgaged Property, take or release other or additional security, modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note, or otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Mortgagee in exercising any right or remedy under the Note, this Instrument, the Guaranty Agreement, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Mortgagee of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Mortgagee's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Mortgagee of any security for the Indebtedness shall not constitute an election by Mortgagee of remedies so as to preclude the exercise of any other right available to Mortgagee. Mortgagee's receipt of any insurance and/or condemnation proceeds shall not operate to cure or waive any Event of Default.

18. LOAN CHARGES. If any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Mortgagor is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Mortgagee in excess of the permitted amounts shall be applied by Mortgagee to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

19. WAIVER OF STATUTE OF LIMITATIONS. Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

20. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Mortgaged Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, the Loan Agreement, any other Loan Document or under applicable law. Mortgagee shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Mortgagor and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

21. **FURTHER ASSURANCES.** Mortgagor shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Mortgagee may reasonably require from time to time in order to assure, grant, and convey to Mortgagee the rights intended to be granted, now or in the future, to Mortgagee under this Instrument and the Loan Documents.

22. **ESTOPPEL CERTIFICATE.** Within twenty (20) days after a written request from Mortgagee, Mortgagor shall deliver to Mortgagee a written statement, signed and acknowledged by Mortgagor, certifying to Mortgagee or any person designated by Mortgagee, as of the date of such statement, (a) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (b) the unpaid principal balance of the Note; (c) the date to which interest under the Note has been paid; (d) that Mortgagor is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if Mortgagor is in default, describing such default in reasonable detail); (e) whether or not there are then existing any setoffs or defenses known to Mortgagor against the enforcement of any right or remedy of Mortgagee under the Loan Documents; and (f) any additional facts reasonably requested by Mortgagee.

23. **GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

(a) Except as provided to the contrary below, this Instrument shall be governed by and construed in accordance with the internal laws of the State of Texas applicable to contracts made and to be performed in such state (without regard to principles of conflicts of law applicable under Texas law) and applicable laws of the United States of America; provided, however, that with respect to the provisions hereof which relate to title or the creation, perfection, priority, enforcement or foreclosure of liens on and security interests in or assignments of any of the Mortgaged Property, or as otherwise required by the laws of the Property Jurisdiction, this Instrument shall be governed by the laws of the Property Jurisdiction; it being understood that, to the fullest extent permitted by the laws of the Property Jurisdiction, the laws of the State of Texas shall govern the validity and enforceability of this Instrument in all instances where the law of the Property Jurisdiction is not specifically made the law applicable to this Instrument.

(b) Each of Mortgagor and Mortgagee consents to the non-exclusive jurisdiction of any and all state and federal courts with jurisdiction in the Property Jurisdiction over Mortgagor and the Mortgaged Property. Mortgagor agrees that its assets shall be used first to satisfy all claims of creditors organized or domiciled in the United States and that no assets of Mortgagor in the United States shall be considered part of any foreign bankruptcy estate.

24. **NOTICE.**

(a) All notices, demands and other communications ("Notice") under or concerning this Instrument shall be in writing. Each Notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed received (i) on the date

delivered, if sent by hand delivery (to the person or department if one is specified) with receipt acknowledged by the recipient thereof; (ii) one (1) Business Day following the date the Notice is deposited with Federal Express or other national overnight carrier; or (iii) the fifth Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

(b) Any party to this Instrument may change the address to which Notices intended for it are to be directed by means of Notice given to the other party in accordance with this Section 24.

(c) Any Notice under the Note and any other Loan Document which does not specify how Notices are to be given shall be given in accordance with this Section 24. A copy of any Notice sent to Mortgagee pursuant to this Section 24 shall be sent to:

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

sent to:

Winston W. Walp, II, Esquire
Jenkins & Gilchrist, P.C.
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202

25. **SINGLE-PURPOSE ENTITY.** Until the Indebtedness is paid in full Mortgagor shall maintain its status as a Single-Purpose Entity and comply with all those covenants with respect to its status as a Single-Purpose Entity as set forth in Section 5.4 of the Loan Agreement.

26. **SUBROGATION.** If, and to the extent that, the proceeds of the Loan are used to pay, satisfy or discharge any obligation of Mortgagor for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "Prior Lien"), such loan proceeds shall be deemed to have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

27. **MORTGAGEE STATEMENT; CERTAIN CHARGES.** With respect to (a) any statement, accounting, or similar information requested by Mortgagor or any other Person pursuant to any provision of applicable law; or (b) any other document furnished to Mortgagor or any other Person by Mortgagee at Mortgagor's request, Mortgagee shall have the right to charge the maximum amount then permitted by law or, if there is no such maximum, Mortgagee's customary charge for

providing such statement, accounting, or other information. Mortgagor shall pay Mortgagee its customary charge for any other service rendered by Mortgagee in connection with the Loan or the Mortgaged Property, including the issuance of a request for full or partial release of the lien of this Instrument, transmitting Loan proceeds to an escrow holder and changing Mortgagee's records relating to the Indebtedness.

28. DISCLOSURE OF INFORMATION. Mortgagee may furnish financial information regarding Mortgagor or the Mortgaged Property to third parties with an existing or prospective interest in the enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to credit rating agencies. Mortgagor irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

29. RELEASE. Within five (5) Business Days following delivery of Mortgagor's written request and upon payment in full of all Indebtedness secured by this Instrument (other than contingent Indebtedness which by their terms survive the release hereof and as to which no event giving rise to the incurrence of any such Indebtedness shall have occurred), including, without limitation, all fees and premiums, including, without limitation, any prepayment premium due under the Note, due Mortgagee in connection with release of this Instrument, Mortgagee shall execute and cause to be recorded a release of the Mortgaged Property from the lien of this Instrument and shall surrender to Mortgagor the Note and all other documents evidencing the Indebtedness secured by this Instrument. The recitals in the release of any matters or facts shall be conclusive proof of their truthfulness. Such release shall operate as a reassignment to Mortgagor of the Rents and profits assigned to Mortgagee under the Assignment of Leases and Rents. Mortgagee shall deliver this Instrument and the Note after release to the Person or Persons legally entitled thereto.

30. EXECUTION OF DOCUMENTS BY MORTGAGEE. Without notice to or affecting the liability of Mortgagor or any other Person for the payment or performance of the Indebtedness, without affecting the lien or priority of this Instrument or Mortgagee's rights and remedies under the Loan Documents, and without liability to Mortgagor or any other Person, Mortgagee shall have the right, at any time and from time to time, to do any one or more of the following: (a) release any part of the Mortgaged Property and (b) execute any extension agreement relating to any or all of the Indebtedness and execute any document subordinating the lien of this Instrument to any other lien or document, or any other document relating to the Mortgaged Property, Indebtedness, or Loan Documents.

31. JOINT AND SEVERAL LIABILITY. If more than one Person or entity signs this Instrument as Mortgagor, the obligations of such Persons shall be joint and several.

32. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY. The relationship between Mortgagee and Mortgagor shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Mortgagee and Mortgagor. No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document.

33. **SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

34. **MISCELLANEOUS PROVISIONS.** The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

35. **WAIVER OF TRIAL BY JURY. EACH OF MORTGAGOR AND MORTGAGEE (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE EXIST. MORTGAGOR AND MORTGAGEE ARE AUTHORIZED TO SUBMIT THIS INSTRUMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES TO ANY LOAN DOCUMENT, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF MORTGAGOR'S AND MORTGAGEE'S WAIVER OF THE RIGHT TO JURY TRIAL. FURTHER, EACH OF MORTGAGOR AND MORTGAGEE CERTIFIES THAT NEITHER MORTGAGOR'S NOR MORTGAGEE'S REPRESENTATIVES OR AGENTS HAVE REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ENFORCEMENT OF THIS WAIVER WILL NOT BE SOUGHT.**

36. **WAIVER OF AUTOMATIC STAY. MORTGAGOR HEREBY AGREES THAT, IN CONSIDERATION OF MORTGAGEE'S AGREEMENT TO MAKE THE LOAN AND IN RECOGNITION THAT THE FOLLOWING COVENANT IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, IN THE EVENT THAT MORTGAGOR SHALL (A) 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; (B) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE BANKRUPTCY CODE OR SIMILAR**

LAW OR STATUTE; (C) 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; (D) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR; OR (E) BE THE SUBJECT OF AN ORDER, JUDGEMENT OR DECREE ENTERED BY ANY COURT OF COMPETENT JURISDICTION APPROVING A PETITION FILED AGAINST MORTGAGOR 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, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, SUBJECT TO COURT APPROVAL, MORTGAGEE SHALL THEREUPON BE ENTITLED AND MORTGAGOR 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 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 MORTGAGEE AS PROVIDED IN THE LOAN DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND MORTGAGOR HEREBY IRREVOCABLY WAIVE ITS RIGHTS TO OBJECT TO SUCH RELIEF.

37. **INDIANA MORTGAGE PROVISIONS.** Notwithstanding anything contained in this Instrument to the contrary:

(a) Where any provision of this Instrument is inconsistent with any provision of Indiana law regulating the creation or enforcement of a lien or security interest in real or personal property including, but not by way of limitation, IC 32-15-6-1 Foreclosure of Mortgages, the provisions of Indiana law shall take precedence over the provisions of this Instrument, but shall not invalidate or render unenforceable any other provisions of this Instrument that can be construed in a manner consistent with Indiana law. To the extent the laws of Indiana limit (i) the availability of the exercise of any of the remedies set forth herein, including without limitation the right of Mortgagee to exercise self-help in connection with the enforcement of the terms of this Instrument, or (ii) the enforcement of waivers and indemnities made by Mortgagor, such remedies, waivers, or indemnities shall be exercisable or enforceable, any provisions in this Instrument to the contrary notwithstanding, if, and to the extent, permitted by the laws in force at the time of the exercise of such remedies or the enforcement of such waivers or indemnities without regard to the enforceability of such remedies, waivers or indemnities at the time of the execution and delivery of this Instrument.

(b) Anything contained herein or in IC 32-8-16-1.5 to the contrary notwithstanding, no waiver made by Mortgagor under this Instrument or any or all of the other Loan

Documents shall constitute the consideration for or be deemed to be a waiver or release by Mortgagee or any judgment holder of the Indebtedness or the right to seek a deficiency judgment against Mortgagor or any other person or entity who may be personally liable for the Indebtedness, which right to seek a deficiency judgment is hereby reserved, preserved and retained by Mortgagee for its own behalf and its successors and assigns.

(c) Part of the Mortgaged Property is or may become Fixtures. It is intended that, as to such Fixtures, this Instrument shall be effective as a financing statement filed as a fixture filing from the date of the filing of this Instrument for record with the Recorder of Marion County, Indiana. The information provided in this paragraph is provided in order that this Instrument shall comply with the requirements of the UCC as enacted in the State of Indiana, for a mortgage instrument to be filed as a financing statement. Mortgagor is the "Debtor" and its name and mailing address are set forth in the preamble of this Instrument. The "Secured Party" is Mortgagee and its name and mailing address from which information concerning the security interest granted herein may be obtained are as set forth in the preamble of this Instrument. A statement describing the portion of the Mortgaged Property comprising the Fixtures hereby secured is set forth in the Granting Clauses hereof. The record owner of the Mortgaged Property is Mortgagor.

(d) Pursuant to IC 32-8-11-9, the lien of this Instrument with respect to any future advances, modifications, extensions, and renewals referred to herein and made from time to time up to a maximum of Twenty-Seven Million Nine Hundred Eighty-Seven Thousand Two Hundred Seventy and 00/100 Dollars (\$27,987,270.00) shall have the same priority to which this Instrument otherwise would be entitled as of the date this Instrument is executed and recorded without regard to the fact that any such future advance, modification, extension, or renewal may occur after this Instrument is executed. Nothing herein contained shall obligate Mortgagee to make any future advances.

(e) In the event that the provisions of this Instrument directly conflict with any provision of the other Loan Documents, the provisions of this Instrument shall govern and control.

(f) The reference in this Instrument to the phrase "Indebtedness" shall include, without limitation, any judgment(s) or final decree(s) rendered to collect any money obligations of Mortgagor to Mortgagee and/or to enforce the performance or collection of all covenants, agreements, other obligations and liabilities of Mortgagor under this Instrument or any or all of the other Loan Documents.

(g) Mortgagor certifies and warrants to Mortgagee, based on Mortgagor's knowledge, that none of the Mortgaged Property is within the definition of the term "property" contained in Section 6 (IC 13-11-2-174) of the Indiana Responsible Property Transfer Law ("IRPTL") (IC 13-25-3-1). Mortgagor shall observe, perform and comply with the requirements of IRPTL in connection with this Instrument and the transaction evidenced by the other Loan Documents.

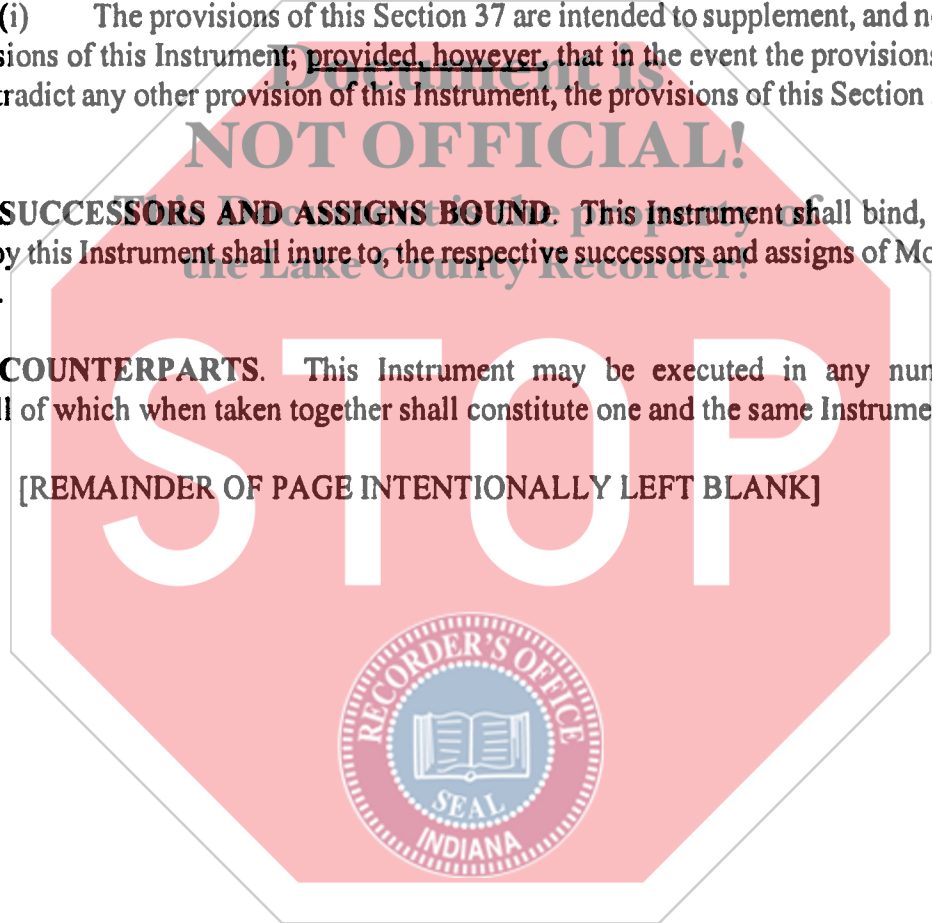
(h) Upon, or at any time after, instituting any judicial foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, Mortgagee may make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Mortgaged Property, as a matter of strict right and without notice to Mortgagor and without regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness secured hereby or the solvency of Mortgagor or any person or persons liable for the payment of the Indebtedness secured hereby, and Mortgagor does hereby irrevocably consent to such appointment. Such receiver shall have all of the powers and duties of receivers pursuant to IC 34-1-12.

(i) The provisions of this Section 37 are intended to supplement, and not limit, the other provisions of this Instrument; provided, however, that in the event the provisions of this Section 37 contradict any other provision of this Instrument, the provisions of this Section 37 shall govern.

38. **SUCCESSORS AND ASSIGNS BOUND.** This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Mortgagee and Mortgagor.

39. **COUNTERPARTS.** This Instrument may be executed in any number of counterparts, all of which when taken together shall constitute one and the same Instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, Mortgagor and Mortgagee have caused this Instrument to be properly executed as of the date first above written.

MORTGAGOR:

CAPITAL SENIOR LIVING ILM-B, INC., a
Delaware corporation

Document is
NOT OFFICIAL!
By: Lawrence A. Cohen (Seal)
Lawrence A. Cohen
Chief Executive Officer
This Document is the property of
the Lake County Recorder!

MORTGAGEE:

NEWMAN FINANCIAL SERVICES, INC.

By: Larry H. Dale (Seal)
Larry H. Dale
SVP/Managing Director
RECORDER'S OFFICE
SEAL
INDIANA

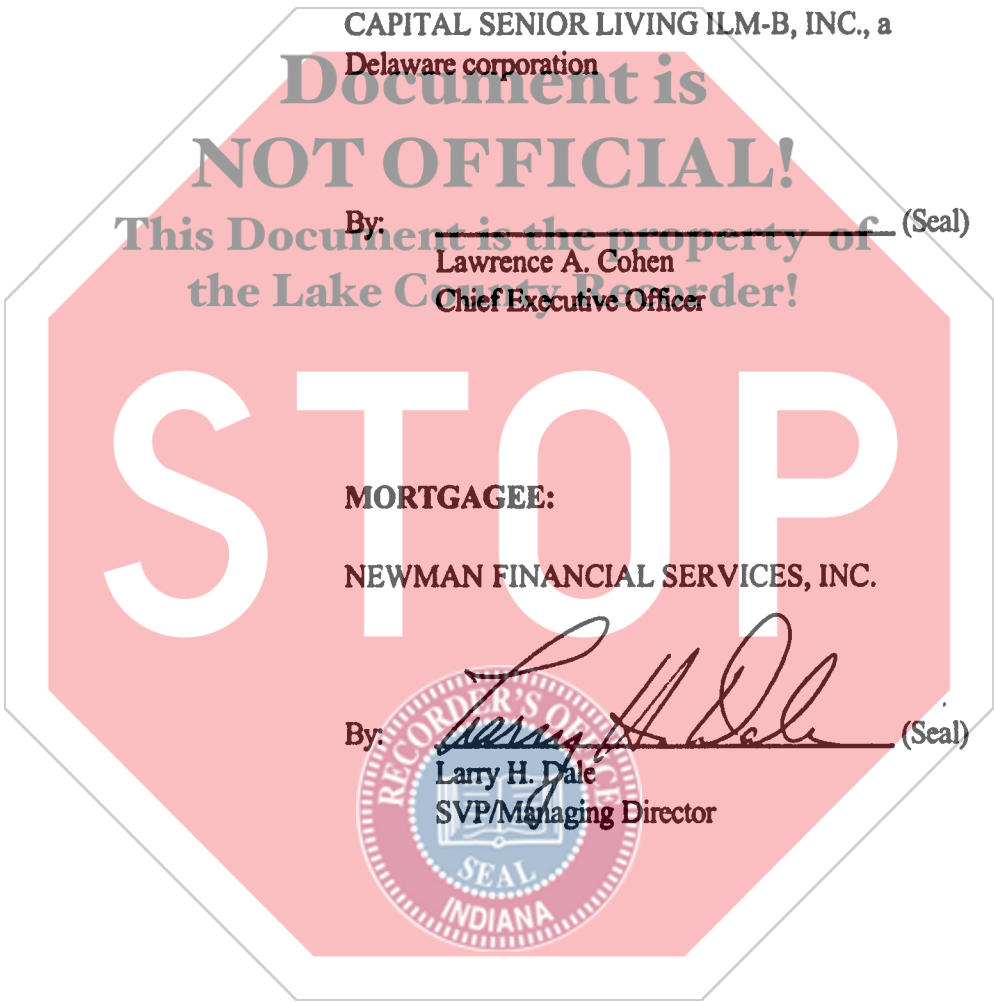
IN WITNESS WHEREOF, Mortgagor and Mortgagee have caused this Instrument to be properly executed as of the date first above written.

MORTGAGOR:

CAPITAL SENIOR LIVING ILM-B, INC., a
Delaware corporation

Document is
NOT OFFICIAL!

By: _____ (Seal)
Lawrence A. Cohen
Chief Executive Officer



MORTGAGEE:

NEWMAN FINANCIAL SERVICES, INC.

By: _____ (Seal)
Larry H. Dale
SVP/Managing Director

ACKNOWLEDGMENT

DISTRICT OF Columbia)
) ss:
CITY OF Washington)

Before me, a Notary Public in and for said district, personally appeared Lawrence A. Cohen, the Chief Executive Officer of CAPITAL SENIOR LIVING ILM-B, INC., a Delaware corporation, organized and existing under the laws of the State of Delaware, and acknowledged the execution of the foregoing instrument for and on behalf of said CAPITAL SENIOR LIVING ILM-B, INC., who, being first duly sworn, acknowledged execution of the foregoing Mortgage.

Witness my hand and Notarial Seal this 8 day of August, 2000.

NOT OFFICIAL!
This Document is the property of
the Lake County Recorder!

Emily S. Naftzger
(Signature)

EMILY S. NAFTZGER

(Printed)

My Commission Expires
August 31, 2004

My commission expires: _____



ACKNOWLEDGMENT

STATE OF Colorado)
) ss:
CITY OF Denver)

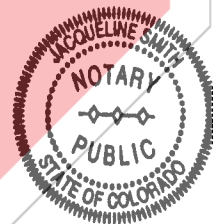
Before me, a Notary Public in and for said district, personally appeared Larry H. Dale, the Senior Vice President/Managing Director of NEWMAN FINANCIAL SERVICES, INC., organized and existing under the laws of the State of Delaware, and acknowledged the execution of the foregoing instrument for and on behalf of said NEWMAN FINANCIAL SERVICES, INC., who, being first duly sworn, acknowledged execution of the foregoing Mortgage.

Witness my hand and Notarial Seal this 9th day of August, 2000.

Jacqueline Smith
(Signature)

Jacqueline Smith
(Printed)

My commission expires: January 11, 2003



MY COMMISSION EXPIRES:
January 11, 2003

EXHIBIT "A"

LEGAL DESCRIPTION



EXHIBIT "A"
LEGAL DESCRIPTION

Parcel 1: A parcel of land in the South half of the Northeast Quarter of Section 17, Township 35 North, Range 8 West of the Second Principal Meridian in the Town of Merrillville, Lake County, Indiana, being more particularly described as follows: Commencing at the Northeast corner of said Section 17; thence South 0 degrees 04 minutes 02 seconds West 1,321.79 feet along the East line of said Section 17, to the point of beginning, said point being the Northeast corner of the South half of the Northeast Quarter of said Section 17; thence continuing along said last mentioned course 1,321.79 feet to the Southeast corner of the South half of the Northeast Quarter of said Section 17; thence North 89 degrees 46 minutes 13 seconds West 100.00 feet along the South line of the South half of the Northeast Quarter of said Section 17; thence North 0 degrees 04 minutes 02 seconds East 350.00 feet; thence North 89 degrees 46 minutes 13 seconds West 580.10 feet; thence North 39 degrees 00 minutes 00 seconds West 353.23 feet; thence North 40 degrees 00 minutes 00 seconds East 907.81 feet to the North line of the South half of the Northeast Quarter of said Section 17; thence South 89 degrees 50 minutes 37 seconds East 320.00 feet along the North line of the South half of the Northeast Quarter of said Section 17 to the point of beginning, excepting therefrom that part platted as Towne Centre Retirement Community, in Plat Book 85, page 92, as corrected by Certificate of Correction recorded December 28, 1999, as Document No. 99107804.

Subject parcel also described as:

A parcel of land in the South half of the Northeast quarter of Section 17, township 35 North, Range 8 West of the Second Principal Meridian in the Town of Merrillville, Lake County, Indiana, being more particularly described as follows: Commencing at the Northeast corner of said Section 17; thence south 0 degrees 04 minutes 02 seconds West 1,321.79 feet along the East line of said Section 17, to the point of beginning, said point being the Northeast corner of the South half of the Northeast quarter of said Section 17; thence continuing along said last mentioned course 562.17 feet to the Northeast corner of Towne Centre Assisted Living Facility as recorded in Plat Book 85, Page 92, as corrected by a Certificate of Correction recorded December 28, 1999, as Document No. 99107804; thence along the Northerly line of said Towne Centre Assisted Living Facility the following seven courses and distances: 1.) North 89 degrees 46 minutes 13 seconds West, 79.49 feet; 2.) South 39 degrees 58 minutes 54 seconds West, 223.22 feet; 3.) North 50 degrees 01 minutes 06 seconds West, 42 feet; 4.) South 39 degrees 58 minutes 54 seconds West, 58 feet; 5.) South 50 degrees 01 minutes 06 seconds East, 42 feet; 6.) South 39 degrees 58 minutes 54 seconds West, 251.56 feet; 7.) North 89 degrees 46 minutes 13 seconds West, 258.75 feet; thence ~~North 89 degrees 46 minutes 13 seconds West, 258.75 feet;~~ thence North 39 degrees 00 minutes 00 seconds West 353.23 feet; thence North 40 degrees 00 minutes 00 seconds East 907.81 feet to the North line of the south half of the Northeast quarter of said Section 17; thence South 89 degrees 50 minutes 37 seconds East 320.00 feet along the North line of the South half of the Northeast quarter of said Section 17 to the Point of Beginning.

Parcel 2: A perpetual Non-exclusive right of way and easement for the benefit of parcel 1 for access, utility and drainage over and across the following described property: A parcel of land in the South half of the Northeast Quarter of Section 17, Township 35 North, Range 8 West of the Second Principal Meridian, in the Town of Merrillville, Lake County, Indiana, being more particularly described as follows: Commencing at the Northeast corner of said Section 17; thence South 0 degrees 04 minutes 02 seconds West 2,643.58 feet along the East line of said Section 17 to the Southeast corner of the South half of the Northeast Quarter of said Section 17; thence North 89 degrees 46 minutes 13 seconds West 600.00 feet along the South line of the South half of the Northeast Quarter of said Section 17 to the point of beginning; thence continuing along said last mentioned course 1,446.82 feet to a point that is 600.00 feet East of the Southwest corner of the Northeast Quarter of said Section 17; thence North 0 degrees 00 minutes 00 seconds West 1,236.42 feet to

EXHIBIT "A" CONT.

the South line of the North 5 rods of the West 80 rods of the said South half; thence South 89 degrees 50 minutes 37 seconds East 720.00 feet; thence North 0 degrees 00 minutes 00 seconds West 82.0 feet along the East line of the North 5 rods of the West 80 rods; thence South 89 degrees 50 minutes 37 seconds East 1,008.32 feet along the North line of the South half of the Northeast Quarter of said Section 17; thence South 40 degrees 00 minutes 00 seconds West 907.81 feet; thence South 39 degrees 00 minutes 00 seconds East 353.23 feet; thence South 28 degrees 00 minutes 00 seconds East 170.25 feet; thence South 0 degrees 04 minutes 02 seconds West 200.0 feet to the point of beginning, less the 10 foot strip lying in the right of way for 73rd Avenue along the southernmost boundary of such Parcel 1, as granted in a certain Easement Agreement dated October 9, 1985 and recorded October 18, 1985 as Document No. 824907, subject to the terms and provisions contained in said agreement.

Parcel 3: Easement for ingress and egress over and across the following described property: A parcel of land in the South half of the Northeast quarter of Section 17, township 35 North, Range 8 West of the Second principal Meridian, being more particularly described as follows: Commencing at the Southeast corner of said South half of the Northeast quarter of Section 17, Township 35 North, Range 8 West; thence South 89 degrees 46 minutes 13 seconds West 600 feet along the south line of said South half; thence North 00 degrees 04 minutes 02 seconds East 100 feet to the point of beginning; thence continuing along the same line North 00 degrees 04 minutes 02 seconds East 100 feet; thence North 28 degrees 00 minutes 00 seconds West 170.25 feet; thence South 89 degrees 46 minutes 13 seconds East 215 feet; thence south 28 degrees 27 minutes 16 seconds West 283.74 feet to the point of beginning, as granted in a Grant of Easement recorded September 16, 1991, as Document No. 91046553.

Parcel 4: Cross Easement Rights set forth in Restrictive Covenant and Cross Easement Agreement recorded November 25, 1998, as Document No. 98094077..



EXHIBIT "B"

FACILITY DESCRIPTION

Property Name/Location	Address	Description of Facility
Towne Centre Merrillville, Indiana	7250 Arthur Boulevard Merrillville, IN 46410	A multilevel retirement campus consisting of 64 skilled nursing beds, 153 independent living units and 33 assisted living units.

