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REGULAR MAIL WAIVER

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

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WM CAPITAL PARTNERS 90, LLC :
c/o Robbins Kelly Patterson & Tucker :
312 Elm Street, Suite 2200 : **COMPLAINT ON PROMISSORY**
Cincinnati, Ohio 45202, : **NOTE AND FOR FORECLOSURE**
Plaintiff, :
vs. :
MALLARD COVE SENIOR :
DEVELOPMENT LLC, a Missouri : **Address:**
limited liability company : Mallard Cove Senior Living
c/o National Registered Agents, Inc. : 1410 Mallard Cove Drive
4400 Easton Commons Way, Suite 125 : Sharonville, OH 45246
Columbus, Ohio 43219, :
Defendant. :

Plaintiff WM Capital Partners 90, LLC (the “Plaintiff”), through undersigned counsel,
states for its Complaint on Promissory Note and for Foreclosure against the above defendants:

COUNT ONE – PROMISSORY NOTE

1. On April 6, 2015, Community & Southern Bank, the predecessor in interest to
Bank OZK, formerly known as Bank of the Ozarks, an Arkansas banking corporation
(collectively, the “Original Lender”) made a loan to Defendant Mallard Cove Senior
Development, LLC, a Missouri limited liability company (the “Borrower”) in the amount of
\$23,500,000.00 (the “Loan”). A copy of the Loan Agreement is attached as Exhibit A-1. The
Loan Agreement, as amended, will be referred to herein as the “Loan Agreement”.

2. The Loan Agreement was amended by a certain Amendment to Loan Documents dated May 29, 2020 (“First Loan Agreement Amendment”). A copy of the First Loan Agreement Amendment is attached as Exhibit A-2.

3. The Loan Agreement was further amended by a certain Amendment to Loan Agreement dated October 10, 2021 (“Second Loan Agreement Amendment”). A copy of the Second Loan Agreement Amendment is attached as Exhibit A-3.

4. The Loan Agreement was further amended by a certain Amendment to Loan Agreement dated December 10, 2022 (“Third Loan Agreement Amendment”). A copy of the Third Loan Agreement Amendment is attached as Exhibit A-4.

5. The Loan is evidenced by a certain Promissory Note dated April 6, 2015, executed by the Borrower in the original principal amount of \$23,500,000.00 (as amended, the “Note”). A copy of the Note with Allonge is attached as Exhibit B-1.

6. The Note was amended by a certain Modification of Promissory Note dated April 16, 2021 (“First Amendment to Note”). A copy of the First Amendment to Note is attached as Exhibit B-2.

7. The Note was further amended by a certain Modification of Promissory Note dated August 18, 2021 (“Second Amendment to Note”). A copy of the Second Amendment to Note is attached as Exhibit B-3.

8. The Note was further amended by a certain Modification of Promissory Note dated November 16, 2022 (“Third Amendment to Note”). A copy of the Third Amendment to Note is attached as Exhibit B-4.

9. The Note, as amended and modified, is in default because of the Borrower's failure to make payments of principal, interest, and other charges when due under the Note. Specifically, the Borrower has not made regular principal and interest payments since March 2023.

10. As a result of the above default, the Plaintiff accelerated the obligations due under the Note, and all amounts are now due and owing under the Note.

11. The Note was executed as part of a commercial loan and is a commercial debt.

12. As a result of the above-referenced default, the Plaintiff is presently owed on the Note from the Borrower as of August 10, 2023:

| | |
|--------------|------------------------|
| Principal | \$18,657,111.94 |
| Interest | \$1,112,126.72 |
| Late Fee | \$40,925.60 |
| Other Fees | \$3,000.00 |
| TOTAL | \$19,813,164.26 |

plus regular interest that continues to accrue at the per diem rate of \$8,292.05, plus default interest that continues to accrue, plus late fees that continue to accrue, plus loan fees and other advances that continue to accrue, plus the Plaintiff's attorney fees accrued to date and those which it will continue to accrue thereafter.

COUNT TWO – FORECLOSURE OF MORTGAGE

13. The Plaintiff restates and incorporates by reference Paragraphs 1 through 12 of its Complaint as if fully rewritten herein.

14. The Plaintiff is the assignee of an Open-End Mortgage and Security Agreement and Fixture Filing (the "Mortgage") executed by the Borrower to secure repayment of the Note. The Mortgage is dated April 6, 2015 and was recorded on April 9, 2015 at Official Record Book

12365, Page 1250, of the Records of Hamilton County, Ohio. A copy of the Mortgage is attached as Exhibit C-1.

15. The Original Lender assigned the Mortgage to the Plaintiff by virtue of an Assignment of Open-End Mortgage, Security Agreement and Fixture Filing recorded July 3, 2023 at Official Record Book 14949, Page 0004, of the Records of Hamilton County, Ohio. Said Assignment was corrected by a Corrective Assignment of Open-End Mortgage, Security Agreement and Fixture Filing recorded August 8, 2023 at Official Record Book 14974, Page 1301 of the Records of Hamilton County, Ohio. Said Assignment and Corrective Assignment shall collectively be referred to herein as the "Mortgage Assignment". A copy of the Mortgage Assignment is attached as Exhibit C-2.

16. The Mortgage constitutes a valid lien upon the real estate and improvements commonly known as the Mallard Cove Senior Living facility located at 1410 Mallard Cove Drive, Sharonville, OH 45246 (collectively, the "Property").

17. As a consequence of the Borrower's failure to pay the amounts due and owing under the Note when due, the Mortgage is in default and the Plaintiff is entitled to have the Mortgage foreclosed.

18. All conditions precedent to the Plaintiff's enforcement of the Mortgage have occurred.

COUNT THREE – ASSIGNMENT OF LEASES AND RENTS

19. The Plaintiff restates and incorporates by reference Paragraphs 1 through 18 of its Complaint as if fully rewritten herein.

20. To further secure repayment of the Note, the Borrower executed an Assignment of Leases and Rents dated April 6, 2015 (the "Assignment of Rents"). The Assignment of Rents was recorded on April 9, 2015 at Official Record Book 12565, Page 1237, of the Records of Hamilton County, Ohio. A copy of the Assignment of Rents is attached as Exhibit D.

21. The Original Lender assigned the Assignment of Rents to the Plaintiff by virtue of the Mortgage Assignment.

22. The Assignment of Rents constitutes a present, absolute, and unconditional assignment by the Borrower of all leases, rents, issues, income, profits, and other rights generated by and associated with the Property (collectively, the "Rents").

23. As a consequence of the Borrower's failure to pay the amounts due, the covenants contained in the Mortgage have been broken, and Plaintiff is entitled to enforce said Assignment of Rents.

24. All conditions precedent to the Plaintiff's enforcement of the Assignment of Rents have occurred.

COUNT FOUR – ASSIGNMENT OF LICENSES, PERMITS AND CONTRACTS

25. The Plaintiff restates and incorporates by reference Paragraphs 1 through 24 of its Complaint as if fully rewritten herein.

26. To further secure repayment of the Loan, the Borrower executed and delivered a certain Assignment of Licenses, Permits and Contracts dated April 6, 2015 (the "Assignment of Licenses"). A copy of the Assignment of Licenses is attached as Exhibit E.

27. The Assignment of Licenses constitutes an assignment of the Borrower's rights in all permits, license agreements, operating contracts, business licenses, state health department

licenses, food service licenses, licenses to conduct business, assisted living facility licenses; management, service, supply, and maintenance contracts; and all other permits, licenses, or contracts of any nature whatsoever of Borrower's with respect to the ownership, occupancy, use, operation, maintenance, and administration of the Property (collectively, the "Licenses, Permits, and Contracts").

28. By virtue of the Borrower's default as set forth above, the Plaintiff is entitled to enforce the Assignment of Licenses, and the Plaintiff is entitled to the use and benefit of the Licenses, Permits, and Contracts.

COUNT FIVE – POSSESSION OF COLLATERAL UNDER SECURITY AGREEMENT

29. The Plaintiff restates and incorporates by reference Paragraphs 1 through 28 of its Complaint as if fully rewritten herein.

30. To further secure repayment of the Note, and as part of the same transaction and in the same document as the Mortgage, the Borrower pledged substantially all the business assets, fixtures, personal property, accounts, and intangibles of the Borrower as described in the Mortgage (the "Security Interest").

31. The Security Interest was perfected by recording the Mortgage and filing a UCC Financing Statement at File No. 1306272470426 of the Records of the Secretary of State of Missouri. A copy of said UCC Financing Statement is attached as Exhibit F-1.

32. The Original Lender gave notice of its assignment of the Security Interest by virtue of the UCC Financing Statement filed at File No. 20230713001856980. A copy of said UCC Financing Statement is attached as Exhibit F-2.

33. The Security Interest, as perfected by the Mortgage and the above Financing Statements, constitutes a valid lien on all the business assets, fixtures, personal property, accounts, and intangibles of the Borrower as described in the Mortgage.

34. As a consequence of Borrower's failure to pay the amounts due and owing under the Note, the Plaintiff is entitled to exercise all its rights under the Security Interest and gain immediate possession of all the business assets, fixtures, personal property, accounts, and intangibles of the Borrower as described in the Mortgage, in the alternative, have those items included in the appraisal of the Property and sold or auctioned off as part of the Property.

35. All conditions precedent to the Plaintiff's enforcement of the Security Interest have occurred.

COUNT SIX – APPOINTMENT OF A RECEIVER

36. The Plaintiff restates and incorporates by reference Paragraphs 1 through 35 of its Complaint as if fully rewritten herein.

37. The terms of the Mortgage entitle the Plaintiff to the appointment of a receiver for the Property upon the default of the Borrower.

38. As a result of the above-described defaults, the Plaintiff is entitled to the appointment of a receiver over the Property, the Rents, the Licenses, Permits, and Contracts, and the property pledged under the Security Interest.

WHEREFORE, the Plaintiff prays for judgment as follows:

1. On Count One, for a judgment against Defendant Mallard Cove Senior Development, LLC for the following amounts as of August 10, 2023:

| | |
|--------------|------------------------|
| Principal | \$18,657,111.94 |
| Interest | \$1,112,126.72 |
| Late Fee | \$40,925.60 |
| Other Fees | \$3,000.00 |
| TOTAL | \$19,813,164.26 |

plus regular interest that continues to accrue at the per diem rate of \$8,292.05, plus default interest that continues to accrue, plus late fees that continue to accrue, plus loan fees and other advances that continue to accrue, plus the Plaintiff's attorney fees accrued to date and those which it will continue to accrue thereafter;

2. On Count Two, that the Mortgage be adjudged a valid lien upon the Property, and that said lien be foreclosed; and that the Property be ordered sold and that Plaintiff be paid out of the proceeds of such sale; and for such other relief, legal and equitable, as may be proper and necessary; and that all the other defendants herein be required to set up their liens or interest in the Property or be forever barred from asserting the same;

3. On Count Three, for an order that the Plaintiff is entitled to exercise all its rights under the Assignment of Rents and further ordering the Borrower to turn over all Rents it is holding and has collected since the default date, and that the Plaintiff may receive and collect all Rents from the Property;

4. On Count Four, for an order enforcing the Assignment of Licenses and granting the Plaintiff the rights and benefits of the Licenses, Permits, and Contracts;

5. On Count Five, for an order granting the Plaintiff possession of business assets, fixtures, personal property, accounts, and intangibles of the Borrower as described in the Mortgage, in the alternative, to include that personal property in the appraisal of the Property and auctioned off as part of the Property;

6. On Count Six, for the appointment of a receiver for the Property, the Rents, the Licenses, Permits, and Contracts, and the property pledged under the Security Interest;
7. On all Counts, for interest, costs, attorney fees, and expenses;
8. On all Counts, for all other relief to which the Plaintiff is entitled in law and in equity.

Respectfully submitted,

/s/ Zachary D. Prendergast
Zachary D. Prendergast (0081368)
Charles E. Rust (0097224)
*Attorneys for Plaintiff WM Capital Partners 90,
LLC*
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E-Mail: zprendergast@rkpt.com
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EXHIBIT A-1

LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is made as of April 6, 2015, by and among **MALLARD COVE SENIOR DEVELOPMENT, LLC**, a Missouri limited liability company (the "Borrower"), **COMMUNITY & SOUTHERN BANK**, a Georgia state banking corporation, as Administrative Agent (together with its successors and assigns, "Administrative Agent") and **COMMUNITY & SOUTHERN BANK**, a Georgia state banking corporation, as the initial Lender party hereto, and the Lenders party hereto from time to time ("Lenders")

RECITALS

A Borrower has requested that the initial Lenders make a loan to Borrower in the principal sum of \$23,500,000 00

B The initial Lenders have agreed to make such loan on the terms and conditions hereinafter set forth

C Administrative Agent, the initial Lender and Borrower have agreed to enter into this Agreement in order to set forth the terms, covenants and conditions with respect to such Loan

AGREEMENT

NOW, THEREFORE, it is hereby agreed as follows

ARTICLE I DEFINITIONS, ACCOUNTING PRINCIPLES, UCC TERMS

11 As used in this Agreement, the following terms shall have the following meanings unless the context hereof shall otherwise indicate

"Accounts" has the meaning given to that term in the Mortgage

"Actual Management Fees" means actual management fees paid or incurred in connection with operation of the Facility

"Adjusted Net Operating Income" means the net pre-tax income from usual operations of the Facility, after Customary Facility Expenses, without deduction for Actual Management Fees or management expenses paid or incurred in connection with the operation of the Facility, calculated based upon the preceding twelve (12) months (except as otherwise expressly provided), plus Loan interest expense to the extent deducted in determining net pre-tax income, and plus non-cash expenses or allowances for depreciation and amortization of the Facility for such period to the extent deducted in determining net pre-tax income, less Assumed Management Fees for such period. In calculating "net pre-tax income," Extraordinary Income and Extraordinary Expenses (defined in a manner reasonably satisfactory to Lender) shall be excluded. For any period less than twelve (12) months, a prorated portion of any Customary Facility Expenses that are payable on an annual, semi-annual or other basis longer than one (1) month (for example, annual taxes or insurance premiums) shall be included in the calculation.

"Administrative Agent" means Community & Southern Bank in its capacity as administrative agent under the Loan Documents, or its successors or assigns in such capacity

"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, members and managers

"Aggregate Amounts Due" has the meaning set forth in Section 2 21

"Applicable Laws" means all applicable laws, including all applicable provisions of constitutions, statutes, rules, ordinances, regulations and orders of all Governmental Authorities and all orders, rulings, writs and decrees of all courts, tribunals and arbitrators

"Applicable Taxes" has the meaning set forth in Section 2 9

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person, or an Affiliate of a Person, that administers or manages a Lender

"Assignment Agreement" means an Assignment and Assumption Agreement substantially in the form of Exhibit "B" with such amendments or modifications as may be approved by the Administrative Agent

"Assignment Effective Date" has the meaning set forth in Section 9 3

"Assignment of Leases and Rents" means that certain Assignment of Leases and Rents of even date herewith by Borrower to Administrative Agent for its benefit and for the benefit of Lenders

"Assignment of Licenses" means that certain Assignment of Licenses, Permits and Contracts of even date herewith by Borrower to Administrative Agent for its benefit and for the benefit of Lenders

"Assumed Debt Service" means the monthly payments for a period of twelve (12) months upon indebtedness equal to then current Loan amount outstanding as of the last day of the period amortized over an assumed term of 300 months at an assumed rate equal to the greater of the Note Rate as the last day of such period or five percent (5%) per annum

"Assumed Management Fees" means assumed management fees of five percent (5%) of net resident revenues of the Facility

"Bankruptcy Code" means the United States Bankruptcy Code, codified at 11 U S C Sections 101 *et seq.*, and the regulations adopted and promulgated pursuant thereto, as amended or modified from time to time

"Business Day" means a day, other than Saturday or Sunday and legal holidays, when Lender is open for business When used with respect to the Note Rate Adjustment Date, "Business Day" shall mean a day upon which United States dollar deposits may be dealt in on the London and New York City interbank markets and commercial banks and foreign exchange markets are open in London and New York City

"Claim" has the meaning set forth in Section 6 10

"Closing Date" means the date on which all or any part of the Loan is disbursed by Lender to or for the benefit of Borrower

"Commitment" means with respect to each Lender, the amount for such Lender as set forth on Schedule 1 1 attached hereto, subject to any assignment (in which case the Commitment assigned will be set forth in the Assignment Agreement), reduction or adjustment pursuant to the terms hereof

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise "Controlling" and "Controlled" have meanings correlative thereto

"Credit Parties" means, collectively, the Borrower and Guarantor

"Customary Facility Expenses" means all expenses normally associated with the ownership and operation of the Facility, and shall include, without limitation, real and personal property taxes, insurance premiums, maintenance expenses and required expenditures or reserves for capital repairs and replacements

"Debt Service Coverage Ratio" means a ratio in which the first number is the sum of Adjusted Net Operating Income for such period and the second number is the sum of the principal amounts due (even if not paid) on the Loan (but which shall not include that portion associated with any balloon payment of the Loan) for the applicable period plus the interest due on the Loan for the applicable period or, if specified in the applicable covenant or condition, Assumed Debt Service for such period All calculations for a period of less than twelve (12) months shall be annualized

"Default" means the occurrence or existence of any event which, but for the giving of notice or expiration of time or both, would constitute an Event of Default

"Default Rate" has the meaning given to that term in Section 2 6

"Defaulting Lender" means any Lender that, as determined by the Administrative Agent, (a) has failed to perform any of its funding obligations hereunder within five (5) Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within five (5) Business Days after request by the Administrative Agent, to confirm in a manner

satisfactory to the Administrative Agent that it will comply with its funding obligations, or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under the Bankruptcy Code, or other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment

“Distributions” has the meaning set forth in Section 5 13

“Eligible Assignee” means (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund, and (iv) any other Person (other than a natural person) approved by Administrative Agent and, unless an Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed), provided that notwithstanding the foregoing, “Eligible Assignee” shall not include any Credit Party or any Related Party of a Credit Party

“Environmental Indemnitees” has the meaning set forth in Section 6 10

“Environmental Indemnity” means the Environmental Indemnity Agreement of even date herewith executed by Borrower and Guarantor to Administrative Agent for its benefit and for the benefit of Lenders

“Environmental Inspections” has the meaning set forth in Section 6 7

“Environmental Permit” means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Land and/or the Improvements

“Equipment” has the meaning given to that term in the Mortgage

“ERISA” has the meaning set forth in Section 3 19(a)

“Event of Default” means any Event of Default as defined in Article VII hereof

“Extraordinary Income and Extraordinary Expenses” means material items of a character significantly different from the typical or customary business activities with respect to the Facility which would not be expected to recur frequently and which would not be considered as recurring factors in any evaluation of the ordinary operating processes of the business of the Facility, and which would be treated as extraordinary income or extraordinary expenses under GAAP

“Exhibit” means an Exhibit to this Agreement, unless the context refers to another document, and each such Exhibit shall be deemed a part of this Agreement to the same extent as if it were set forth in its entirety wherever reference is made thereto

“Facility” means the assisted living facility located on the Land, as the same may now or hereafter exist, together with any other general or specialized care facilities, if any, now or hereafter operated on the Land

“Federal Funds Rate” means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher one one-hundredth of one percent (1/100 of 1%)) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided, (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to Community & Southern Bank or any other Lender selected by the Administrative Agent on such day on such transactions as determined by the Administrative Agent

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business, with capital of not less than \$100,000,000

“GAAP” means, as in effect from time to time, generally accepted accounting principles consistently applied as promulgated by the American Institute of Certified Public Accountants

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government

“Guarantor” means Jonathan Levey, an individual

“Guaranty Agreement” means that certain Payment and Performance Guaranty Agreement of even date herewith from Guarantor to Administrative Agent for its benefit and for the benefit of Lenders

“Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil, explosives, flammable materials, radioactive materials, polychlorinated biphenyls (“PCBs”) and compounds containing them, lead and lead-based paint, asbestos or asbestos-containing materials in any form that is or could become friable, underground storage tanks, whether empty or containing any substance, any substance the presence of which on the Land and/or the Improvements is prohibited by any federal, state or local authority, any substance that requires special handling, and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any Hazardous Materials Law

“Hazardous Materials Laws” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements,

administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Land and/or the Improvements Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U S C Section 9601, et seq , the Resource Conservation and Recovery Act, 42 U S C Section 6901, et seq , the Toxic Substance Control Act, 15 U S C Section 2601, et seq , the Clean Water Act, 33 U S C Section 1251, et seq , and the Hazardous Materials Transportation Act, 49 U S C Section 1801, and their state analogs

“Improvements” means all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including but not limited to, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatuses which are or shall be attached to the Land or said buildings, structures or improvements

“Indebtedness” means any (a) obligations for borrowed money, (b) obligations, payment for which is being deferred by more than ninety (90) days, representing the deferred purchase price of property other than accounts payable arising in connection with the purchase of inventory customary in the trade and in the ordinary course of Borrower’s business, (c) obligations, whether or not assumed, secured by Liens or payable out of the proceeds or production from the Accounts and/or property now or hereafter owned or acquired, and (d) the amount of any other obligation (including obligations under financing leases) which would be shown as a liability on a balance sheet prepared in accordance with GAAP

“Indemnified Parties” has the meaning set forth in Section 9 1

“Indemnitee Agent Party” has the meaning set forth in Section 8 6

“Interest Accrual Period” has the meaning set forth in Section 2 4

“Inventory” has the meaning given to that term in the Mortgage

“Land” means the land described in Exhibit “A” attached hereto and made a part hereof

“Late Fees” has the meaning set forth in Section 2 13

“Lenders” means collectively, the Lender or Lenders identified on the signature pages hereto and any other Eligible Assignee which becomes a Lender pursuant to the provisions hereof and that has executed and delivered to Administrative Agent an Assignment Agreement, and each of their respective permitted successors and assigns

“Lending Office” means as to each Lender, its office located at its address set forth herein or in the Assignment Agreement or such other office as any Lender may hereafter designate as its Lending Office by notice to Borrower and Administrative Agent

“LIBOR” has the meaning set forth in Section 2 5

“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 Agreement and the other Loan Documents

“Loan” means the Loan in the principal amount of Twenty-Three Million Five Hundred Thousand and No/100 Dollars (\$23,500,000 00)

“Loan Application” has the meaning set forth in Section 3 26

“Loan Documents” means, collectively, this Agreement, the Note, the Mortgage, the Assignment of Leases and Rents, the Assignment of Licenses, the Guaranty Agreements, and the Environmental Indemnity, together with any and all other documents executed by Borrower or others, evidencing, securing or otherwise relating to the Loan

“Loan Obligations” means the aggregate of all principal and interest owing from time to time under the Note and all indebtedness, expenses, charges and other amounts from time to time owing under the Note, this Agreement or the other Loan Documents and all covenants, agreements and other obligations from time to time owing to, or for the benefit of, Administrative Agent or any Lender pursuant to the Loan Documents

“Managed Care Plans” means any health maintenance organization, preferred provider organization, individual practice association, competitive medical plan, or similar arrangement, entity, organization, or Person

“Management Agreement” means any management agreement for the Facility hereafter approved by Lender

“Manager” means any manager under any Management Agreement approved by Lender

“Margin” has the meaning set forth in Section 2 5

“Maturity Date” has the meaning set forth in Section 2 14

“Mortgage” means that certain Mortgage and Security Agreement and Fixture Filing of even date herewith from the Borrower in favor of Administrative Agent for its benefit and for the benefit of Lenders, encumbering the Land, the Facility and related real and personal property

“Mortgaged Property” has the meaning given to that term in the Mortgage

“Note” means collectively, each of the Promissory Notes that together are in the aggregate principal amount of the Loan payable by the Borrower to the order of a Lender

“Note Rate Adjustment Date” has the meaning set forth in Section 2 5

“OFAC List” means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U S Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U S Treasury Department, Office of Foreign Assets Control pursuant to any Requirements of Law, including, without limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States. The OFAC List currently is accessible through the internet website www.treas.gov/ofac/t11sdn.pdf

“O&M Program” means a written program of operations and maintenance established or approved in writing by Administrative Agent relating to any Hazardous Materials in, on or under the Land and/or the Improvements

“Payment Date” has the meaning set forth in Section 2.11

“Percentage” means with respect to each Lender, the applicable percentage represented by such Lender’s then-current Commitment in relation to the then-current aggregate amount of all Commitments, provided that, in each case, when calculating “Required Lenders,” the Commitment of, or the outstanding amount of any advances under the Loan held or deemed held by, any Defaulting Lender shall not be included in any calculation. The current Percentage of each Lender is set forth in Schedule 1.1

“Permits” means all licenses, permits and certificates used or necessary 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 private person or entity whatsoever concerning ownership, operation, use or occupancy

“Permitted Encumbrances” has the meaning given to that term in Section 5.2 hereof

“Person” means an individual, partnership, limited partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature

“Physical Plant Standards” has the meaning set forth in Section 3.11

“Proceeds” has the meaning given to that term in the Mortgage

“Prohibited Activity and Condition” has the meaning set forth in Section 6.1

“Register” means a register maintained by Administrative Agent for recordation of the addresses of Lenders and the Commitments and outstanding principal amounts of the Loan held by each

“Reimbursement Contracts” means all third-party reimbursement contracts relating to the Facility which are now or hereafter in effect with respect to residents qualifying for coverage under the same, including federal or state reimbursement agreements, 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

“Related Parties” means with respect to any Person, such Person’s Affiliates and the partners, directors, trustees, officers, employees, counsel, agents and advisors of such Person and of such Person’s Affiliates

“Remedial Work” has the meaning set forth in Section 6 8

“Rents” has the meaning given to that term in the Mortgage

“Required Lenders” means (a) as long as there are two (2) or fewer Lenders, all Lenders, and (b) as long as there are more than two (2) Lenders, those Lenders holding Percentages which equal 66-2/3%, excluding, for purposes of calculation, the Percentage of any Defaulting Lender

“Requirements of Law” means (a) the organizational documents of an entity, and (b) any law, regulation, ordinance, code, decree, treaty, ruling or determination of an arbitrator, court or other Governmental Authority, or any Executive Order issued by the President of the United States, in each case applicable to or binding upon such Person or to which such Person, any of its property or the conduct of its business is subject including, without limitation, laws, ordinances and regulations pertaining to the zoning, occupancy and subdivision of real property

“Single Purpose Entity” means a Person which complies with the requirements of Section 5 4

“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)

“Security Instruments” means the Mortgage, the Assignment of Leases and the Assignment of Licenses

“Third-Party Payors Programs” has the meaning given in Section 3 9

“Transfer” has the meaning set forth in Section 6 7

1 2 Singular terms shall include the plural forms and vice versa, as applicable, of the terms defined

1 3 Each term contained in this Agreement and defined in the Uniform Commercial Code (the “UCC”) in effect from time to time in the state in which the Land is located shall have

the meaning given to such term in the UCC, unless the context otherwise indicates, and shall include, without limitation, the meaning set forth in this Agreement

14 All accounting terms used in this Agreement shall be construed in accordance with GAAP, except as otherwise specified

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

ARTICLE II TERMS OF THE LOAN

21 **The Loan.** Borrower has agreed to borrow the Loan from Lenders, and each Lender has agreed to make its part of the Loan to Borrower in accordance with its Commitment, subject to Borrower's compliance with and observance of the terms, conditions, covenants, and provisions of this Agreement and the other Loan Documents, and Borrower has made the covenants, representations, and warranties herein and therein as a material inducement to each Lender to make the Loan

22 **Security for the Loan.** The Loan will be evidenced, secured and guaranteed by the Loan Documents

23 **Loan Amount.** The initial principal amount of Twenty-Three Million Five Hundred Thousand and No/100 Dollars (\$23,500,000 00) of the Loan will be advanced on the Closing Date. Amounts repaid will not be readvanced

24 **Calculation Basis; Interest Accrual Period.** Interest on the outstanding principal balance of the Loan shall be calculated utilizing a 360 day year and paid for the actual number of days elapsed for any whole or partial month in which interest is being calculated. Interest shall accrue, with respect to any Payment Date, from the period beginning on and including the Closing Date through and including the day immediately prior to the first Payment Date, and from and including each Payment Date through and including the day immediately prior to each subsequent Payment Date (each an "Interest Accrual Period"). By way of example, for a Payment Date of February 1, the Interest Accrual Period would run from January 1 through and including January 31

25 **Note Rate and Note Rate Adjustment Dates.** Interest on the outstanding principal balance of the Loan shall accrue at the "Note Rate", which shall mean an interest rate which is the sum of (a) the variable per annum percentage rate, as of any date of determination (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to (i) the rate of interest that is identified and normally published by or under the authority of ICE Benchmark Administration Limited or affiliate thereof ("ICE" as the Intercontinental Exchange London Interbank Offered Rate for loans in United States dollars for the period of one month ("LIBOR"), divided by (ii) the sum of one minus the daily average during the preceding month of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for "Eurocurrency Liabilities" (as defined in Regulation D) on each Note Rate Adjustment Date plus (b) a margin

(“Margin”) of three and one-half percent (3.5%), subject to reduction of the Margin as hereinafter set forth. On each Note Rate Adjustment Date, Administrative Agent will obtain the close-of-business LIBOR from ICE (or its authorized publisher of LIBOR). If ICE ceases publication or ceases to publish LIBOR, Administrative Agent shall select a comparable publication to determine the LIBOR and provide notice thereof to Borrower. LIBOR may or may not be the lowest rate based upon the market for U.S. dollar deposits in the London Interbank Eurodollar Market at which Lender prices loans on the date on which LIBOR is determined by Lender as set forth above. Adjustments to the Note Rate in connection with changes in LIBOR shall be made two (2) Business Days prior to the beginning of any Interest Accrual Period (each “Note Rate Adjustment Date”) except that the initial Note Rate shall be determined two (2) Business Days prior to the Closing Date.

2.6 Default Interest Rate. If Borrower fails to make any payment of principal, interest or fees on the date on which such payment becomes due and payable whether at maturity or by acceleration, or if an Event of Default exists, the Note Rate then payable on the Loan shall from the date on which such payment was due (and not the date of the payment default) increase to the Note Rate plus five hundred (500) basis points (the “Default Rate”) and shall continue to accrue at the Default Rate until full payment is received or such Event of Default is cured within applicable cure periods (or any extension thereof granted by Lender) or waived in writing by Lender. Interest at the Default Rate shall also accrue on any judgment obtained by Lender in connection with collection of the Loan or enforcement of any obligations due under the Loan Documents until such judgment is paid in full.

2.7 Adjustments due to Calculation Errors. If Administrative Agent at any time determines, in the sole but reasonable exercise of its discretion that it has miscalculated the amount of the monthly payment of principal and/or interest (whether because of a miscalculation of the Note Rate or otherwise), Administrative Agent shall give notice to Borrower of the corrected amount of such monthly payment (and the corrected amount of the Note Rate, if applicable) and (a) if the corrected amount of such monthly payment represents an increase thereof, Borrower shall, within ten (10) calendar days after the date of such notice, pay to Administrative Agent for further payment to Lenders any sums that Borrower would have otherwise been obligated to pay to Lenders had the amount of such monthly payment not been miscalculated or (b) if the corrected amount of such monthly payment represents a decrease thereof, and Borrower is not otherwise in breach or default under any of the terms and provisions of the Note, the Loan Agreement or any of the other Loan Documents, Borrower shall, within ten (10) calendar days thereafter be paid the sums that Borrower would not have otherwise been obligated to pay to Lenders had the amount of such monthly payment not been miscalculated.

2.8 LIBOR Unascertainable. Administrative Agent’s obligation to maintain interest based on LIBOR shall be suspended and the Note Rate shall be based on a rate reasonably chosen by Administrative Agent as most closely approximating the Note Rate that was based upon LIBOR upon Administrative Agent’s determination, in good faith, that adequate and reasonable means do not exist for ascertaining LIBOR or that a contingency has occurred which materially and adversely affects the London Interbank Eurodollar Market at which Administrative Agent prices loans (which determination by Administrative Agent shall be conclusive and binding on Borrower in the absence of manifest error). Computation of the Note Rate based on such replacement rate shall continue until Administrative Agent determines that

the circumstances giving rise to Administrative Agent's substitution of the replacement rate for LIBOR no longer exists and Administrative Agent shall promptly notify Borrower of such determination

2 9 **Adjustment for Impositions on Loan Payments.** All payments made by Borrower under the Note, this Agreement and the other Loan Documents shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, and all liabilities with respect thereto, now or hereafter imposed, levied, collected, withheld or assessed by any governmental authority (all such non-excluded taxes, levies, imposts, duties, charges, fees, deductions, withholdings and liabilities, collectively, "**Applicable Taxes**") Notwithstanding the foregoing, if Borrower shall be required by law to deduct any Applicable Taxes from or in respect of any sum payable hereunder to Administrative Agent or Lenders, the following shall apply (a) Borrower shall make all such required deductions and shall pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable law and (b) the sum payable to Administrative Agent and Lenders shall be increased in an amount determined by Administrative Agent in its sole discretion, as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), Administrative Agent and Lenders receive an amount equal to the sum Administrative Agent and Lenders would have received had no such deductions been made except that there shall be excluded any amounts paid by Borrower to the relevant taxing authority for taxes imposed upon or measured by the income of Administrative Agent or Lenders Payments made pursuant to this Section shall be made within ten (10) Business Days after Administrative Agent makes written demand therefore

2 10 **Acceleration.** Notwithstanding anything to the contrary contained herein, if Borrower is prohibited by law from paying any amount due to Lender under Section 2 9 hereof, Administrative Agent may elect to declare the unpaid principal balance of the Loan, together with all unpaid interest accrued thereon and any other amounts due hereunder, due and payable within thirty (30) days of Administrative Agent's written notice to Borrower Administrative Agent's delay or failure in accelerating the Loan upon the discovery or occurrence of an event under Section 2 9 shall not be deemed a waiver or estoppel against the exercise of such right

2 11 **Note Payments and Payment Dates.** Commencing on May 10, 2015 and continuing on the tenth (10th) day of each successive month thereafter, provided that if the tenth (10th) day of any month is not a Business Day, such payment shall be due and payable on the immediately preceding Business Day (each being a "**Payment Date**"), Borrower shall pay to Administrative Agent, for further payment to Lenders (a) consecutive monthly payments of accrued interest at the Note Rate based upon the principal outstanding during the Interest Accrual Period immediately preceding the applicable Payment Date, (b) consecutive monthly payments of principal initially based upon the schedule of principal payments necessary to fully amortize the original principal amount of the Note over an assumed term of twenty-five (25) years (beginning on the Closing Date) based upon the actual number of days in each month and a three hundred and sixty (360) day year and an assumed rate equal to at an assumed rate of 5% per annum, and (c) any other amounts due under the Loan Documents

2 12 **Prepayments.** Borrower has the right to prepay all or any part of the Loan on any Payment Date prior to the Maturity Date without any penalty or premium so long as each of the following conditions are satisfied

- (a) Borrower provides prior written notice to Administrative Agent of its intent to prepay
- (b) Any partial prepayment shall be applied to installments due in inverse order of maturity
- (c) Borrower pays with such prepayment all accrued interest through the date of such prepayment and all other outstanding amounts, other than any remaining principal amount, then due and unpaid under the Loan Agreement and the other Loan Documents
- (d) Borrower pays with such prepayment all administrative and legal costs and expenses incurred by Administrative Agent in connection with such prepayment and any other costs and expenses due and payable by Borrower under the Loan Documents

2 13 **Late Fees** If any payment due on a Payment Date is not received in full within ten (10) calendar days after the Payment Date on which such payment is due, Borrower shall pay to Administrative Agent, for its own account and not for the account of Lenders, immediately and without demand, a late payment charge, for each month during which such payment delinquency exists, equal to five percent (5%) of such amount ("Late Fees") to defray the expenses incurred by Administrative Agent in handling and processing such delinquent payment

2 14 **Maturity Date.** The entire unpaid balance of the principal amount hereof and all interest accrued thereon through the end of the current Interest Accrual Period and including interest accruing at the Default Rate, to and including the Maturity Date (as defined below) together with all fees, costs and amounts due and payable under the Loan Documents shall, unless sooner paid, and except to the extent that payment thereof is sooner accelerated, be and become due and payable on April 10, 2020 (the "Maturity Date"), provided that if the designated Maturity Date is not a Business Day, such payment shall be due and payable on the immediately preceding Business Day

2 15 **Delivery of Payments.** All payments due to Administrative Agent or Lenders under the Loan Documents are to be paid in lawful tender of the United States of America, in immediately available funds, directly to Administrative Agent at Community & Southern Bank at the address set forth in this Agreement, or at such other place as Administrative Agent may designate to Borrower in writing from time to time, according to the following wire instructions

Beneficiary Bank Community & Southern Bank
ABA Routing Number 061112458
Attention Kelly Harrison
Re Mallard Cove Senior Development, LLC

All amounts due under the Loan Documents shall be paid without setoff, counterclaim or any other deduction whatsoever. No payment due under the Loan or any of the other Loan Documents shall be deemed paid to Administrative Agent until received by Administrative

Agent at its designated office on a Business Day prior to 2:00 p.m. Eastern Time. Any payment received after the time established by the preceding sentence shall be deemed to have been paid on the immediately following Business Day. Each payment that is paid to Administrative Agent within ten (10) days prior to the date on which such payment is due, and prior to its scheduled Payment Date, shall not be deemed a prepayment and shall be deemed to have been received on the Payment Date solely for the purpose of calculating interest due. If any payment received by Administrative Agent is deemed by a court of competent jurisdiction to be a voidable preference or fraudulent conveyance under any bankruptcy, insolvency or other debtor relief law, and is required to be returned by Administrative Agent or Lenders, then the obligation to make such payment shall be reinstated, notwithstanding that the Note may have been marked satisfied and returned to Borrower or otherwise canceled, and such payment shall be immediately due and payable upon demand.

2.16 Costs of Enforcement. Borrower shall pay to Administrative Agent on demand the amount of any and all expenses incurred by Administrative Agent (a) in enforcing its rights hereunder or under the Security Instruments, and/or the Loan Documents, (b) as the result of the occurrence of any Default or Event of Default, including but not limited to the expense of collecting any amount owed hereunder, and of any and all attorneys' fees incurred by Administrative Agent in connection with such Default or Event of Default, whether suit be brought or not, and (c) in protecting the security for the Loan and Borrower's obligations under the Loan Documents. Such expenses shall be added to the principal amount hereof, shall be secured by the Security Instruments and shall accrue interest at the Default Rate.

2.17 Limitation on Interest. All agreements between Borrower, Administrative Agent and Lenders, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of acceleration of the maturity of any indebtedness governed hereby or otherwise, shall the interest contracted for, charged or received by Administrative Agent or any Lender exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Administrative Agent or any Lender in excess of the maximum lawful amount, the interest payable to Administrative Agent or any Lender shall be reduced to the maximum amount permitted under applicable law, and, if from any circumstance the Administrative Agent or any Lender shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal of the Loan and not to the payment of interest, or, if such excessive interest exceeds the unpaid balance of principal of the Loan, such excess shall be refunded to Borrower. All interest paid or agreed to be paid to Administrative Agent or any Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal of the Loan (including the period of any renewal or extension thereof) so that interest thereon for such full period shall not exceed the maximum amount permitted by applicable law. This Section shall control all agreements between the Borrower, Administrative Agent and Lender.

2.18 Fees Borrower shall pay Administrative Agent and Lenders the following fees

(a) A fee to the Administrative Agent and initial Lender of one-half percent (0.50%) of the initial funded amount of the Loan, contemporaneously with closing and execution of this Agreement

(b) An annual fee to Administrative Agent, for its own account and not for the account of Lenders, of \$3,000 on each anniversary of the date of this Agreement to offset Administrative Agent's expenses of monitoring and inspections

All such fees are fully earned when due and nonrefundable

2.19 **Intentionally Deleted.**

2.20 **Application of Proceeds.** Except as otherwise provided in this Agreement, prior to the occurrence of a Default, Administrative Agent shall apply all payments and prepayments in respect of the Loan Obligations of Borrower under this Agreement or any other Loan Document to Administrative Agent and to Lenders (pro rata in accordance with the Percentage of each), but otherwise in such order as shall be specified by Borrower. After the occurrence of a Default, Administrative Agent shall, unless otherwise specified at the direction of the Required Lenders, which direction shall be consistent with the last two sentences of this Section 2.9, apply all payments and prepayments in respect of any Loan Obligations of Borrower under this Agreement or any other Loan Document and all proceeds of collateral, if any, in the following order:

(a) first, to pay all costs and expenses incurred by Administrative Agent in connection with such sale of collateral or other realization, including reasonable attorneys' fees and expenses actually incurred (including, without limitation, the expenses and other allocated costs of internal counsel),

(b) second, to pay to Administrative Agent amounts which Administrative Agent may have advanced, plus interest thereon, which Administrative Agent has not then been reimbursed by Lenders or Borrower, as applicable,

(c) third, to pay Loan Obligations of Borrower in respect of any fees, expenses, reimbursements or indemnities then due to Administrative Agent,

(d) fourth, to pay Loan Obligations of Borrower in respect of any fees, expenses, reimbursements or indemnities then due to the Lenders,

(e) fifth, to pay all accrued interest in respect of the Loan, less Administrative Agent's servicing fee from interest paid,

(f) sixth, to pay Administrative Agent its servicing fee, if any, from interest paid,

(g) seventh, to the ratable payment or prepayment of principal outstanding on the Loan, and

(h) eighth, to the ratable payment of all other Loan Obligations of Borrower

Borrower shall remain liable and will pay, on demand, any deficiency remaining in respect of the Loan Obligations, together with interest thereon at a rate per annum equal to the Default Rate, which interest shall constitute part of the Loan Obligations. The order of priority set forth in subsections (a), (b) and (c) above and the related provisions of this Agreement are set forth solely to determine the rights and priorities of Administrative Agent. The order of priority set forth in subsections (d), (e) and (f) above may at any time and from time to time be changed by the Lenders without necessity of notice to or consent of or approval by Borrower, or any other Person. The order of priority set forth in subsections (a), (b) and (c) above may be changed only with the prior written consent of Administrative Agent.

221 Ratable Sharing The Lenders hereby agree among themselves that, if any of them shall, whether by payment (other than (a) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (b) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in its interest in the Loan or other Loan Obligations to any assignee or participant), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Loan Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code or other Applicable Law relating to insolvency or relief from debts, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Loan Documents (collectively, the "Aggregate Amounts Due" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then (i) the Lender receiving such proportionately greater payment shall promptly notify the Administrative Agent and each other Lender of the receipt of such payment and (ii) at the option of Administrative Agent, Administrative Agent may credit the disproportionate amount received by such Lender against any distributions due to such Lender, and (iii) until so credited, the Lender receiving such proportionately greater payment shall apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them, provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of any Credit Party or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Each Credit Party expressly consents to the foregoing arrangement. The provisions of this Section shall not be construed to apply to (y) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, or (z) any payment obtained by any Lender as consideration for the assignment or sale of a participation in its interest in the Loan or other Loan Obligations owed to it.

222 Settlement with Lenders. Administrative Agent shall promptly pay to each Lender its Percentage of all payments received by Administrative Agent hereunder in respect of the principal of, or interest on, the Loan, as the case may be, net of any amounts payable pursuant to this Agreement by such Lender to Administrative Agent, by wire transfer of same day funds. All payments received during Administrative Agent's normal business hours after 2:00 p.m. local time at the office of Administrative Agent first shown above shall be deemed

received at the opening of the next Business Day Any and all fees payable to Administrative Agent under this Agreement or any other Loan Documents shall be fully earned and non-refundable upon the payment thereof

2 23 Non-Receipt of Funds by Administrative Agent. Unless Borrower notifies Administrative Agent prior to the date on which it is scheduled to make payment to Administrative Agent of principal, interest or fees to Administrative Agent for the account of the Lenders, that it does not intend to make such payment, Administrative Agent may assume that such payment has been made Administrative Agent may, but shall not be obligated to, make the amount of such payment available to the intended recipient in reliance upon such assumption If Borrower has not in fact made such payment to Administrative Agent, the recipient of such payment shall, on demand by Administrative Agent, repay to Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by Administrative Agent until the date Administrative Agent recovers such amount at a rate per annum equal to the Federal Funds Rate for such day

2 24 Sums Held By Administrative Agent or Lenders. Neither Administrative Agent nor Lenders shall, except as otherwise provided by the Loan Documents or required by law, have any obligation to pay interest on any sums from time to time deposited by Borrower with Administrative Agent pursuant to this Agreement

ARTICLE III BORROWER'S REPRESENTATIONS AND WARRANTIES

To induce Administrative Agent and Lenders to enter into this Agreement, and to make the Loan to Borrower, Borrower represents and warrants to Administrative Agent and Lenders as follows

3 1 Existence, Power and Qualification Borrower is a duly organized and validly existing Missouri limited liability company, has the power to own its properties and to carry on its business as is now being conducted, and is duly qualified to do business and is in good standing in every jurisdiction in which the character of the properties owned by it or in which the transaction of its business makes its qualification necessary

3 2 Power and Authority Borrower has full power and authority to borrow the indebtedness evidenced by the Note and to incur the Loan Obligations provided for herein, all of which have been authorized by all proper and necessary action All consents, approvals authorizations, orders or filings of or with any court or governmental agency or body, if any, required for the execution, delivery and performance of the Loan Documents by Borrower have been obtained or made

3 3 Single Purpose Entity Borrower is a Single Purpose Entity

3 4 Pending Matters

(a) **Operations, Financial Condition** Except as disclosed in the separate Loan Closing Certification executed by Borrower, no action or investigation is pending or, to

Borrower's actual knowledge, threatened before or by any court or administrative agency which might result in any material adverse change in the financial condition, operations or prospects of Borrower or any lower reimbursement rate under the Reimbursement Contracts (other than statewide or nationwide changes) To Borrower's actual knowledge, Borrower is not in violation of any agreement, the violation of which might reasonably be expected to have a material adverse effect on its business or assets, and Borrower is not in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which it is subject

(b) Land and Improvements There are no proceedings pending, or, to Borrower's actual knowledge, threatened, to acquire through the exercise of any power of condemnation, eminent domain or similar proceeding any part of the Land, the Improvements or any interest therein, or to enjoin or similarly prevent or restrict the use of the Land or the operation of the Facility in any manner None of the Improvements is, as of the date of this Agreement, subject to any material unrepairsed casualty or other damage

(c) Completion of Improvements, Mechanic's Liens All of the improvements to the Mortgaged Property have been substantially completed, all contractors have been paid in full to date, no mechanic's liens have been filed against the Mortgaged Property and to Borrower's knowledge, there is no threatened or pending mechanic's lien claim

35 Financial Statements Accurate All financial statements heretofore or hereafter provided by Borrower are and will be true and complete in all material respects as of their respective dates and fairly present the financial condition of Borrower, and there are no material liabilities, direct or indirect, fixed or contingent, as of the respective dates of such statements which are not reflected therein or in the notes thereto or in a written certificate delivered with such statements The financial statements of Borrower have been prepared in accordance with GAAP There has been no material adverse change in the financial condition, operations, or prospects of Borrower since the dates of such statements except as fully disclosed in writing with the delivery of such statements All financial statements of the operations of the Facility heretofore or hereafter provided to Administrative Agent and Lenders are and will be true and complete in all material respects as of their respective dates The Borrower's fiscal year end is December 31

36 Compliance with Facility Laws The Facility is duly licensed and operating as set forth in Schedule 36 under the applicable laws of the state where the Land is located The Borrower is the lawful owner of the Facility and the lawful owner of all Permits for the Facility All Permits held by Borrower (a) are in full force and effect, (b) constitute all of the permits, licenses and certificates required for the use, operation and occupancy thereof, (c) have not been pledged as collateral for any other loan or Indebtedness, (d) are held free from any restriction or any encumbrance which would materially adversely affect the use or operation of the Facility and (e) are not provisional, probationary or restricted in any way Borrower as well as the operation of the Facility is in compliance in all material respects with the applicable provisions of all laws, rules, regulations and published interpretations to which Facility is subject No waivers of any laws, rules, regulations, or requirements (including, but not limited to, minimum foot requirements) are required for Facility to operate at the foregoing licensed unit capacity All Reimbursement Contracts are in full force and effect with respect to the Facility, and Borrower is in good standing with all the respective agencies governing such applicable Facility licenses,

program certification and Reimbursement Contracts Borrower is current in the payment of all so-called provider specific taxes or other assessments with respect to such Reimbursement Contracts Borrower will maintain any required Permits in full force and effect In the event Administrative Agent acquires the Facility through foreclosure or otherwise, neither Administrative Agent, a subsequent manager, a subsequent lessee nor any subsequent purchaser (through foreclosure or otherwise) must obtain a certificate of need or similar approval prior to applying for and receiving a license to operate the Facility and certification to receive Medicare (if applicable) and Medicaid payments (and its successor programs) for residents having coverage thereunder provided that no service or capacity is changed The Facility is self-managed by Borrower, there is no Facility management agreement currently in effect

3 7 **Maintain Capacity** Borrower has not granted to any third party the right to reduce the number of licensed units in the Facility or to apply for approval to transfer the right to any or all of the Facility licensed capacity to any other location

3 8 **Intentionally Omitted**

3 9 **Third Party Payors** To Borrower's knowledge, there is no threatened or pending revocation, suspension, termination, probation, restriction, limitation, or nonrenewal affecting Borrower or the Facility or any participation or provider agreement with any third-party payor, including Blue Cross and/or Blue Shield, and any other private commercial insurance managed care and employee assistance program (such programs, the "Third-Party Payors' Programs") to which Borrower presently is subject All private insurance cost reports and financial reports submitted by Borrower are and will be materially accurate and complete and have not been and will not be misleading in any material respects No cost reports for the Facility remain "open" or unsettled except as otherwise disclosed

3 10 **Governmental Proceedings and Notices** To Borrower's actual knowledge, neither the Borrower, Guarantor nor the Facility is currently the subject of any proceeding by any governmental agency, and no notice of any violation has been received from any federal, state or local government or quasi-governmental body or agency or any administrative or investigative body that would, directly or indirectly, or with the passage of time

(a) have a material adverse impact on Borrower's or Facility's ability to accept and/or retain residents or result in the imposition of a fine, a sanction, a lower rate certification or a lower reimbursement rate for services rendered to eligible residents (other than with respect to statewide or nationwide changes),

(b) modify, limit or annul or result in the transfer, suspension, revocation or imposition of probationary use of any of the Permits, or

(c) affect Borrower's or Facility's continued participation in any existing Third-Party Payors' Programs, or any successor programs thereto, at current rate certifications

3 11 **Physical Plant Standards** The Facility and the use thereof comply in all material respects with all applicable local, state and federal building codes, fire codes, health care, nursing/assisted living/senior housing facility (as applicable) and other similar regulatory

requirements (the "Physical Plant Standards"), and no waivers of Physical Plant Standards exist at the Facility

3 12 **Pledge of Receivables** Borrower has not pledged its Accounts as collateral security for any loan or Indebtedness other than, if applicable, the Loan

3 13 **Payment of Taxes and Property Impositions** Borrower has filed all federal, state, and local tax returns which it is required to file or obtained extensions therefor and has paid, or made adequate provision for the payment of, all taxes and assessments which are shown pursuant to such returns or are required to be shown thereon, including, without limitation, provider taxes which are due and owing as of the date hereof All such returns are complete and accurate in all respects Borrower has paid or made adequate provision for the payment of all applicable water and sewer charges, ground rents (if applicable) and Taxes (as defined in the Mortgage) with respect to the Land and/or the Improvements which are due and owing as of the date hereof

3 14 **Title to Mortgaged Property** Borrower has good and marketable title to all of the Mortgaged Property, subject to no lien, mortgage, pledge, encroachment, zoning violation, or encumbrance, except Permitted Encumbrances which do not materially interfere with the security intended to be provided by the Mortgage or the current use or operation of the Land and the Improvements or the current ability of the Facility to generate net operating income sufficient to service the Loan All Improvements situated on the Land are situated wholly within the boundaries of the Land

3 15 **Priority of Mortgage** The Mortgage constitutes a valid first lien against the real and personal property described therein, prior to all other liens or encumbrances, including those which may hereafter accrue, excepting only Permitted Encumbrances which do not and will not materially and adversely affect (a) the ability of Borrower to pay in full the principal of and interest on the Note when due, (b) the security (and its value) intended to be provided by the Mortgage or (c) the current use of the Land and the Improvements

3 16 **Location of Chief Executive Offices** The location of Borrower's chief executive office(s) are set forth on Schedule 3 16 hereto Borrower has no place(s) of business other than the location of the Facility except as listed on Schedule 3 16

3 17 **Disclosure** All information furnished or to be furnished by Borrower to Administrative Agent and Lenders in connection with the Loan or any of the Loan Documents is, or will be at the time the same is furnished, accurate and correct in all material respects and complete insofar as completeness may be necessary to provide Administrative Agent and Lenders with true and accurate knowledge of the subject matter

3 18 **Trade Names** Neither Borrower nor, to its knowledge, the Facility, which operates under the trade name of the Facility set forth in Schedule 3 6, has changed its name, been known by any other name, or been a party to a merger, reorganization or similar transaction within the last five (5) years except as listed on Schedule 3 6

3 19 **ERISA** As of the date hereof and throughout the term of this Agreement,

(a) Borrower is not an "employee benefit plan," as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), subject to Title I of ERISA, and none of the assets of Borrower constitute "plan assets" (within the meaning of Department of Labor Regulation Section 2510 3-101 as modified by Section 3(42) of ERISA) of one or more such plans, and

(b) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA, and transactions by or with Borrower are not be subject to state statutes regulating investments of, and fiduciary obligations with respect to, governmental plans

The execution and delivery of the Loan Documents and the borrowing of indebtedness hereunder do not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code")

3 20 **Ownership** The ownership interests of the Persons comprising Borrower and each of the respective interests in Borrower are correctly and accurately set forth on Schedule 3 20 hereto

3 21 **Compliance With Applicable Laws** The Facility and its operations and the Land and Improvements comply in all material respects with all covenants and restrictions of record and applicable laws, ordinances, rules and regulations, including, without limitation, the Americans with Disabilities Act and the regulations thereunder, and all laws, ordinances, rules and regulations relating to zoning, setback requirements and building codes and there are no waivers of any building codes currently in existence for the Facility

3 22 **Solvency** Borrower is solvent for purposes of 11 U S C § 548, and the borrowing of the Loan will not render Borrower insolvent for purposes of 11 U S C § 548

3 23 **Other Indebtedness** Borrower has no outstanding Indebtedness, secured or unsecured, direct or contingent (including any guaranties), other than (a) the Loan, and (b) indebtedness which represents trade payables or accrued expenses incurred in the ordinary course of business of owning and operating the Mortgaged Property (however nothing herein is intended to permit any claims or potential lien claims of laborers, suppliers, mechanics and materialmen or other construction-related claims with respect to the existing Improvements, all of which Borrower confirms have been fully paid), no other debt incurred by Borrower after the date hereof will be secured (senior, subordinate or *pari passu*) by the Mortgaged Property

3 24 **Other Obligations** Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or any of the Mortgaged Property is otherwise bound, other than obligations incurred in the ordinary course of the operation of the Mortgaged Property and other than obligations under the Mortgage and the other Loan Documents

3 25 **Fraudulent Conveyances** Borrower has not entered into this Agreement or any of the other Loan Documents with the actual intent to hinder, delay, or defraud any creditor, and Borrower has received reasonably equivalent value in exchange for its obligations under the Loan Documents Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of Borrower's assets exceeds and will, immediately following the execution

and delivery of the Loan Documents, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and mature Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Borrower)

3 26 No Change in Facts or Circumstances All information in any application for the Loan submitted to Administrative Agent or any Lender (the "Loan Application") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate

3 27 Fraud and Abuse.

(a) Anti-Kickback Law After consultation with counsel concerning the federal anti-kickback law (42 U S C A SEC 1320a-7b(b)), neither Borrower nor its agents have offered or given any remuneration or thing of value to any person to encourage referral to the Facility nor has Borrower or its agent solicited or received any remuneration or thing of value in exchange for Borrower's agreement to make referrals or to purchase goods or services for the Facility

(b) Relationships No physician or other healthcare practitioner has an ownership interest in, or financial relationship with, Borrower or the Facility

(c) Required Adjustments All cost report periods for all Facility payors have been closed and settled, and all required adjustments have been fully paid and/or implemented

3 28 No Illegal Activity as Source of Funds No portion of the Mortgaged Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity

3 29 Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws Borrower, and to the best of Borrower's knowledge, after having made diligent inquiry, (a) each Person owning an interest in Borrower, or (b) Guarantor (i) is not currently identified on OFAC List, and (ii) is not a Person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States Borrower has implemented procedures, and will consistently apply those procedures throughout the term of the Loan, to ensure the foregoing representations and warranties remain true and correct during the term of the Loan

3 30 Business Purpose. The Loan is being obtained solely for the purpose of financing a business, professional or commercial activity and is not for personal, agricultural, family or household purposes Notwithstanding the foregoing, Administrative Agent and Lender

acknowledge and agree that Borrower may use the proceeds of the Loan to refinance existing indebtedness on the Mortgaged Property and provide Jonathan Levey with cash-out proceeds to acquire the membership interests of David A Smith, Trustee of the David A Smith Revocable Trust U/T/A dated February 23, 2003, and Alexandra M Fisher, Trustee of the Alexandra F Fisher Living Trust dated June 1, 2004, in Borrower and other entities and/or provide equity proceeds for reimbursement of expenses of the Quail Ridge facility located in Oklahoma City, Oklahoma

ARTICLE IV AFFIRMATIVE COVENANTS OF BORROWER

Borrower agrees with and covenants unto Administrative Agent and each Lender that until the Loan Obligations have been paid in full, Borrower shall

4 1 **Payment of Loan/Performance of Loan Obligations** Duly and punctually pay or cause to be paid the principal and interest of the Note in accordance with its terms and duly and punctually pay and perform or cause to be paid or performed all Loan Obligations hereunder and under the other Loan Documents

4 2 **Maintenance of Existence** Maintain its existence as a Missouri limited liability company in good standing under the laws of the jurisdiction of its organization or formation, and, in each jurisdiction in which the character of the property owned by it or in which the transaction of its business makes qualification necessary, maintain good standing and qualification to do business

4 3 **Maintenance of Single Purpose Status** Maintain its existence as a Single Purpose Entity

4 4 **Accrual and Payment of Taxes** During each fiscal year, make accurate provision for the payment in full of all current tax liabilities of all kinds including, without limitation, federal and state income taxes, franchise taxes, payroll taxes, provider taxes (to the extent necessary to participate in and receive maximum funding pursuant to Reimbursement Contracts), Taxes (as defined in the Mortgage), all required withholding of income taxes of employees, all required old age and unemployment contributions, and all required payments to employee benefit plans, and pay the same when they become due

4 5 **Insurance** Maintain, at its expense, the following insurance coverages and policies with respect to the Mortgaged Property and the Facility, which coverages and policies must be acceptable to Administrative Agent's insurance consultant in its discretion

(a) Comprehensive "all risk" or "special" cause of loss insurance, including coverage for windstorms and hail, in an amount equal to 100% of the full replacement cost of the Facility, which replacement cost shall be determined by the "Insurable Value" or "Cost Approach to Value" reflected in the most recent Administrative Agent approved appraisal for the Facility, without deduction for depreciation. Such insurance shall also include (i) agreed insurance amount endorsement waiving all co-insurance provisions, and (ii) an "Ordinance or Law Coverage" endorsement if the Facility or the use thereof shall constitute a legal non-conforming structure or use

(b) Commercial general liability insurance against claims for sexual harassment abuse of residents, personal injury, bodily injury, death or property damage, in or about the Facility to be on a so-called "occurrence" basis for at least \$1,000,000 00 per occurrence and \$3,000,000 00 in the aggregate

(c) Professional liability insurance against claims for personal injury, bodily injury or death, in or about the Facility to be on a so-called "occurrence" basis for at least \$1,000,000 00 per occurrence and \$3,000,000 00 in the aggregate

(d) Business interruption income insurance for the Facility in an amount equal to 100% of the net income plus carrying costs and extraordinary expenses of the Facility for a period of twelve (12) months as projected by Administrative Agent, containing a 90-day extended period of indemnity endorsement

(e) Flood Hazard insurance if any portion of the Improvements is located in a "flood zone area," as identified in the Federal Register by the Federal Emergency Management Agency as a 100-year flood zone or "special flood hazard area" and in which flood insurance is available In lieu thereof, Administrative Agent will accept proof, satisfactory to it in its sole discretion, that the Improvements are not within the boundaries of a designated area

(f) Workers' compensation insurance, if applicable and required by state law, subject to applicable state statutory limits, and employer's liability insurance with a limit of \$1,000,000 00 per accident and per disease per employee with respect to the Facility

(g) Comprehensive boiler and machinery insurance, including property damage coverage and time element coverage in an amount equal to \$2,000,000, or 100% of the full replacement cost, whichever is less, without deduction for depreciation, of the Facility housing the machinery, if steam boilers, pipes, turbines, engines or any other pressure vessels are in operation with respect to the Facility Such insurance coverage shall include a "joint loss" clause if such coverage is provided by an insurance carrier other than that which provides the comprehensive "all risk" insurance described above

(h) During the period of any construction and/or renovation of capital improvements with respect to the Facility or any new construction at the Facility, builder's risk insurance for any improvements under construction and/or renovation, including, without limitation, costs of demolition and increased cost of construction or renovation, in an amount equal the amount of the general contract plus the value of any existing purchase money financing for improvements and materials stored on or off the Property, including "soft cost" coverage

(i) If the Facility is located in a seismically active area or an area prone to geologic instability and mine subsidence, Administrative Agent may require an inspection by a qualified structural or geological engineer satisfactory to Administrative Agent, and at Borrower's expense The Facility must be structurally and geologically sound and capable of withstanding normal seismic activity or geological movement Administrative Agent reserves the right to require earthquake insurance or Maximum Probable Loss insurance on a case by case basis in amounts determined by Administrative Agent

(j) Such other insurance coverages as may be deemed commercially reasonable by Administrative Agent at any time during the term of the Loan and as shall be provided within such time periods as Administrative Agent may determine in its commercially reasonable discretion

All insurance policies shall have a term of not less than one year and shall be in the form and amount and with deductibles as, from time to time, shall be acceptable to Administrative Agent in its commercially reasonable discretion All such policies shall provide for loss payable solely to Administrative Agent and shall contain a standard "non-contributory mortgagee" endorsement or its equivalent relating, among other things, to recovery by Administrative Agent notwithstanding the negligent or willful acts or omissions of Borrower and notwithstanding (i) occupancy or use of the Facility for purposes more hazardous than those permitted by the terms of such policy, (ii) any foreclosure or other action taken by Administrative Agent pursuant to the Mortgage upon the occurrence of an Event of Default thereunder, or (iii) any change in title or ownership of the Facility

All insurance policies must be written by an admitted carrier licensed in the State in which the Facility is located and such insurance carrier must have a long-term senior debt rating of at least "A" by Standard and Poor's Rating Service

All liability insurance policies (including, but not limited to, general liability, professional liability and any applicable blanket and/or umbrella policies) must name Administrative Agent and its successors and/or assigns as additional insureds, and all property insurance policies must name Administrative Agent and its successors and/or assigns as the named mortgage holder entitled to all insurance proceeds Administrative Agent shall have the right, without Borrower's consent, by notice to the insurance company, to change the additional insured and named mortgagee endorsements in connection with any sale of the Loan Notwithstanding anything contained herein, so long as no Default or Event of Default exists, Borrower shall be entitled to all insurance proceeds covered by and disbursed under the above-referenced comprehensive all risk insurance policy provided such proceeds are less than \$50,000.00 per occurrence

All insurance policies for the above-required insurance must provide for thirty (30) days prior written notice of cancellation to Administrative Agent

Policies or binders, together with evidence of the above required insurance on ACORD Forms 25S and 28 or their equivalent, must be submitted to Administrative Agent prior to setting the interest rate on the Loan

With respect to insurance policies which require payment of premiums annually, not less than thirty (30) days prior to the expiration dates of the insurance policies obtained pursuant to this Agreement, Borrower shall pay such amount, except to the extent Administrative Agent is escrowing sums therefor pursuant to the Loan Documents Not less than thirty (30) days prior to the expiration dates of the insurance policies obtained pursuant to this Agreement, originals or certified copies of renewals of such policies (or certificates evidencing such renewals) bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Administrative Agent of such payment, which premiums shall not be paid by Borrower through

or by any financing arrangement, shall be delivered by Borrower to Administrative Agent at the address set forth in this Agreement. Borrower shall not carry separate insurance, concurrent in kind or form or contributing in the event of loss, with any insurance required under this Section. If the limits of any policy required hereunder are reduced or eliminated due to a covered loss, Borrower shall pay the additional premium, if any, in order to have the original limits of insurance reinstated, or Borrower shall purchase new insurance in the same type and amount that existed immediately prior to the loss.

If Borrower fails to maintain and deliver to Administrative Agent the original policies or certificates of insurance required by this Agreement, Administrative Agent may, at its option, procure such insurance and Borrower shall pay or, as the case may be, reimburse Administrative Agent for, all premiums thereon promptly, upon demand by Administrative Agent, with interest thereon at the Default Rate from the date paid by Administrative Agent to the date of repayment and such sum shall constitute a part of the Loan Obligations.

The insurance required by this Agreement may, at the option of Borrower, be effected by blanket and/or umbrella policies issued to Borrower or to an Affiliate of Borrower covering the Facility and the properties of such Affiliate, provided that, in each case, the policies otherwise comply with the provisions of this Agreement and allocate to the Facility, from time to time, the coverage specified by this Agreement, without possibility of reduction or coinsurance by reason of, or damage to, any other property (real or personal) named therein. If the insurance required by this Agreement shall be effected by any such blanket or umbrella policies, Borrower shall furnish to Administrative Agent original policies or certified copies thereof, with schedules attached thereto showing the amount of the insurance provided under such policies which is applicable to the Facility.

Neither Administrative Agent nor its agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Agreement, it being understood that (a) Borrower shall look solely to its insurance company for the recovery of such loss or damage, (b) such insurance company shall have no rights of subrogation against Administrative Agent, its agents or employees, and (c) Borrower shall use its commercially reasonable efforts to procure from such insurance company a waiver of subrogation rights against Administrative Agent. If, however, such insurance policies do not provide for a waiver of subrogation rights against Administrative Agent (whether because such a waiver is unavailable or otherwise), then Borrower hereby agrees, to the extent permitted by law and to the extent not prohibited by such insurance policies, to waive its rights of recovery, if any, against Administrative Agent, its agents and employees, whether resulting from any damage to the Facility, any liability claim in connection with the Facility or otherwise. If any such insurance policy shall prohibit Borrower from waiving such claims, then Borrower must obtain from such insurance company a waiver of subrogation rights against Administrative Agent.

Borrower appoints Administrative Agent as Borrower's attorney-in-fact, which appointment shall be deemed irrevocable and coupled with an interest, to cause the issuance of an endorsement of any insurance policy to bring Borrower into compliance herewith and, as limited above, at Administrative Agent's sole option, to make any claim for, receive payment for, and execute and endorse any documents, checks or other instruments in payment for loss, theft, or damage covered under any such insurance policy, provided, however, that in no event

will Administrative Agent be liable for failure to collect any amounts payable under any insurance policy

4 6 **Proceeds of Insurance or Condemnation** If, after damage to or destruction of or condemnation of the Mortgaged Property (or any part thereof), the net Proceeds of insurance or condemnation (after payment of Administrative Agent's reasonable costs and expenses in connection with the administration thereof) are

(a) less than Fifty Thousand and No/100 Dollars (\$50,000 00) and no Default or Event of Default exists, Administrative Agent shall deliver such proceeds to Borrower to be applied within thirty (30) days thereafter to the repair, restoration and replacement by Borrower of the Improvements, Equipment and Inventory damaged, destroyed or taken,

or

(b) Fifty Thousand and No/100 Dollars (\$50,000 00) or more, Administrative Agent shall make such net Proceeds available to Borrower subject to the following terms

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

(ii) The Improvements, Equipment, and Inventory to which loss or damage has resulted shall be capable of being restored to its preexisting condition and utility in all material respects with a value equal to or greater than that which existed prior to such loss or damage and such restoration shall be capable of being completed prior to the earlier to occur of
(i) the expiration of business interruption insurance as determined by an independent inspector or
(ii) the Maturity Date,

(iii) Within forty-five (45) days from the date of such loss or damage Borrower shall have given Administrative Agent a written notice electing to have the Proceeds applied for such purpose,

(iv) Within ninety (90) days following the date of notice under the preceding subparagraph (iv) and prior to any Proceeds being disbursed to Borrower, Borrower shall have provided to Administrative Agent all of the following

(A) complete plans and specifications for restoration, repair and replacement of the Improvements, Equipment and Inventory damaged to the condition, utility and value required by (iii) above,

(B) if loss or damage exceeds Fifty Thousand Dollars (\$50,000), fixed-price or guaranteed maximum cost bonded construction contracts for completion of the repair and restoration work in accordance with such plans and specifications,

(C) builder's risk insurance for the full cost of construction with Administrative Agent named under a standard mortgagee loss-payable clause

(D) such additional funds as in Administrative Agent's reasonable opinion are necessary to complete such repair, restoration and replacement, and

(E) copies of all permits and licenses necessary to complete the work in accordance with the plans and specifications,

(v) Administrative Agent may, at Borrower's expense, retain an independent inspector to review and approve plans and specifications and completed construction and to approve all requests for disbursement, which approvals shall be conditions precedent to release of Proceeds as work progresses,

(vi) No portion of such Proceeds shall be made available by Administrative Agent for architectural reviews or for any other purposes which are not directly attributable to the cost of repairing, restoring or replacing the Improvements, Equipment and Inventory to which a loss or damage has occurred unless the same are covered by such insurance,

(vii) Borrower shall diligently pursue such work and shall complete such work prior to the earlier to occur of the expiration of business interruption insurance or the Maturity Date,

(viii) Each disbursement by Administrative Agent of such Proceeds and deposits shall be funded subject to conditions and in accordance with disbursement procedures which a commercial construction lender would typically establish in the exercise of sound banking practices and shall be made only upon receipt of disbursement requests on an AIA G702/703 form (or similar form approved by Administrative Agent) signed and certified by Borrower and, if required by Administrative Agent, its architect and general contractor with appropriate invoices and lien waivers as required by Administrative Agent, and

(ix) Administrative Agent for itself and the benefit of Lenders shall have a first lien on and security interest in all building materials and completed repair and restoration work and in all fixtures and equipment acquired with such Proceeds, and Borrower shall execute and deliver such mortgages, deeds of trust, security agreements, financing statements and other instruments as Administrative Agent shall request to create, evidence, or perfect such lien and security interest

In the event and to the extent that such Proceeds are Fifty Thousand and No/100 Dollars (\$50,000.00) or more and are not required to be used for the repair, restoration and replacement of the Improvements, Equipment and Inventory to which a loss or damage has occurred, or, if the conditions set forth herein for such application are otherwise not satisfied, then Administrative Agent shall be entitled without notice to or consent from Borrower to apply such Proceeds, or the balance thereof, at Administrative Agent's option either (a) to the full or partial payment or prepayment of the Loan Obligations (without premium) in the manner aforesaid or (b) to the repair, restoration and/or replacement of all or any part of such Improvements, Equipment and Inventory to which a loss or damage has occurred Any excess Proceeds after such application by Administrative Agent shall be paid to Borrower

47 **Financial and Other Information** Provide Administrative Agent, and cause Guarantor, and, if applicable, Manager, to provide to Administrative Agent, with a sufficient

number of copies for each Lender, at Administrative Agent's address set forth in this Agreement, the following financial statements and information on a continuing basis during the term of the Loan

(a) Within ninety (90) days after the end of each fiscal year of Borrower, unaudited financial statements of Borrower, which statements shall include a balance sheet and a statement of income and expenses for the year then ended, shall include all supporting schedules, and shall be prepared in accordance with GAAP and certified as true and correct by the chief financial officer (or other officer reasonably acceptable to Administrative Agent) of Borrower. The fiscal year of Borrower ends December 31.

(b) Within ninety (90) days after the end of each calendar year, unaudited financial statements of Guarantor in form satisfactory to Administrative Agent in its commercially reasonable discretion, which financial statements shall include a balance sheet and statement of cash flows, shall include all supporting schedules and shall be prepared in accordance with tax basis accounting principles and certified as true and correct by Guarantor.

(c) Within forty-five (45) days after the end of each calendar quarter, unaudited interim financial statements of the operations of the Facility, certified as true and correct by the chief financial officer of the Borrower, shall be prepared in accordance with GAAP, and shall include a balance sheet as of the end of such quarter and an operating statement for the year to date and for the quarter then ended.

(d) Within ten (10) days after the end of each calendar quarter, a rent roll in detail satisfactory to Administrative Agent, and which shall include the average occupancy for such quarter.

(e) Within thirty (30) days after the filing deadline, as may be extended from time to time, copies of all federal, state and local tax returns of Borrower and Guarantor, together with all supporting documentation and required schedules.

(f) Prior to December 31 of each year, an annual operating budget for the Facility for the coming year in form satisfactory to Administrative Agent.

(g) Within ten (10) days after receipt, copies of all licensure and certification survey reports and statements of deficiencies (with plans of correction attached thereto).

(h) Within ten (10) days after Borrower's receipt, any and all notices (regardless of form) from any and all licensing and/or certifying agencies, including but not limited to, that the Facility's license is being downgraded to a substandard category, revoked or suspended, or that action is pending or being considered to downgrade to a substandard category, revoke or suspend the Facility's license or certification.

(i) If requested by Administrative Agent, within ninety (90) days after the end of each calendar year, and more frequently, if requested by Administrative Agent, an aged accounts receivable report for the Facility in sufficient detail to show amounts due by the account age classifications of 30 days, 60 days, 90 days, 120 days, and over 120 days.

Administrative Agent reserves the right to require that the annual financial statements of Borrower be audited and prepared by an independent certified public accounting firm acceptable to Administrative Agent, at Borrower's sole cost and expense, (i) if an Event of Default exists, (ii) if required by internal policy or by any investor in any securities backed in whole or in part by the Loan or any rating agency rating such securities, or (iii) if Administrative Agent has reasonable grounds to believe that the unaudited financial statements do not accurately represent the financial condition of Borrower. Borrower shall have the right to approve the accounting firm, not to be unreasonably withheld, if the sole basis of such audit is item (ii) above.

Administrative Agent further reserves the right to require such other financial information of Borrower, Guarantor, and/or the Facility, at such other times (including monthly or more frequently) as it shall reasonably deem necessary. All financial statements must be in the form and detail as Administrative Agent shall from time to time request.

4 8 **Compliance Certificate** At the time of furnishing the quarterly operating statements required under Section 4.7 herein, furnish to Administrative Agent with a sufficient number of copies for each Lender a compliance certificate in the form attached hereto as Schedule 4.8 executed by a financial officer of Borrower.

4 9 **Books and Records** Keep and maintain at all times at the Facility or, if applicable, at the Manager's offices, and upon Administrative Agent's request make available at the Facility, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the results of the operation of the Facility, and copies of all written contracts, leases (if any), and other instruments which affect the Mortgaged Property, which books, records, contracts, leases (if any) and other instruments shall be subject to examination and inspection at any reasonable time by Administrative Agent (upon reasonable advance notice, which for such purposes only may be given orally, except in the case of an emergency or following an Event of Default, in which case no advance notice shall be required), provided, however, that if an Event of Default has occurred and is continuing, Borrower shall deliver to Administrative Agent upon written demand all books, records, contracts, leases (if any) and other instruments relating to the Facility or its operation and Borrower authorizes Administrative Agent to obtain a credit report on Borrower at any time.

4 10 **Payment of Indebtedness** Duly and punctually pay or cause to be paid all other Indebtedness now owing or hereafter incurred by Borrower in accordance with the terms of such Indebtedness, except such Indebtedness owing to those other than Administrative Agent or any Lender which is being contested in good faith and with respect to which any execution against properties of Borrower has been effectively stayed and for which reserves and collateral for the payment and security thereof have been established in sufficient amounts as determined by Administrative Agent in its sole commercially reasonable discretion.

4 11 **Records of Accounts** Maintain all records, including records pertaining to the Accounts of Borrower, at the principal place of business of Borrower as set forth in this Agreement.

4 12 **Conduct of Business** Conduct the operation of the Facility at all times in a manner consistent with the level of operation of the Facility as of the date hereof, including without limitation, the following

(a) to maintain the standard of care for the residents of the Facility at all times at a level necessary to ensure quality care for the residents of the Facility in accordance with customary and prudent industry standards,

(b) to operate the Facility in a prudent manner and in compliance with applicable laws and regulations relating thereto and cause all Permits, Reimbursement Contracts (if any), and any other agreements necessary for the use and operation of the Facility or, if applicable, as may be necessary for participation in any applicable reimbursement programs to remain in effect without reduction in the number of licensed capacity authorized for use in the applicable reimbursement programs,

(c) to maintain sufficient Inventory and Equipment of types and quantities at the Facility to enable Borrower to perform operations of the Facility adequately,

(d) to keep all Improvements and Equipment located on or used or useful in connection with the Facility in good repair, working order and condition, reasonable wear and tear excepted, and from time to time make all needed and proper repairs, renewals, replacements, additions, and improvements thereto to keep the same in good operating condition,

(e) to maintain sufficient cash in the operating accounts of the Facility in order to satisfy the working capital needs of the Facility, and

(f) to keep all required Permits current and in full force and effect

4 13 **Periodic Surveys** Furnish to Administrative Agent, within twenty (20) days of receipt, a copy of any licensing agency survey or report and any statement of deficiencies and/or any other report indicating that any action is pending or being considered to downgrade the Facility to a substandard category, and within the time period required by the particular agency for furnishing a plan of correction also furnish or cause to be furnished to Administrative Agent a copy of the plan of correction generated from such survey or report for the Facility, and correct or cause to be corrected any deficiency, the curing of which is a condition of continued licensure or for full participation in any reimbursement program pursuant to any Reimbursement Contract for existing residents or for new residents to be admitted with coverage, by the date required for cure by such agency (plus extensions granted by such agency)

4 14 **Debt Service Coverage Ratio.**

(a) Maintain (commencing with the closing of the Loan) and within forty-five (45) days after the end of each calendar quarter beginning with the quarter ending June 30, 2015 and for each calendar quarter thereafter until the Loan is paid in full, provide evidence to Administrative Agent of the achievement of a Debt Service Coverage Ratio for the Facility, after deduction of Assumed Management Fees, of not less than 1 25 to 1 0 For the first such test, the applicable period shall be three (3) months, for the second test, the applicable period shall be six

(6) months, for the third test, the applicable period shall be nine (9) months, and for each subsequent test, the applicable period shall be twelve (12) months

(b) If the Facility fails to achieve or Borrower fails to timely provide evidence of achievement of the required Debt Service Coverage Ratio for the Facility, such failure shall constitute an Event of Default, except that as a cure of such Event of Default, Borrower may deposit with Administrative Agent, at Borrower's option within fifteen (15) days of such failure, additional cash or other liquid collateral in an amount which, when added to Adjusted Net Operating Income, would have resulted in the noncomplying Debt Service Coverage Ratio requirement having been satisfied. If after Borrower has deposited such additional cash or liquid collateral, the Facility again fails to achieve or Borrower fails to timely provide evidence of the achievement of the Debt Service Coverage Ratio requirement for the Facility set forth above for a second consecutive quarter, then as a cure of such Event of Default Borrower may deposit with Administrative Agent, at Borrower's option within fifteen (15) days of such failure, additional cash or other liquid collateral (with credit for amounts currently being held by Administrative Agent pursuant to the foregoing sentence), in an amount which, if the same had been applied on the first (1st) day of the first quarter for which such noncompliance of the Debt Service Coverage Ratio requirement occurred to reduce the outstanding principal indebtedness of the Loan, would have resulted in the noncomplying Debt Service Coverage Ratio requirement having been satisfied. Any additional cash or liquid collateral deposited by Borrower hereunder in order to achieve the required Debt Service Coverage Ratio for the Facility and cure any existing Event of Default with respect thereto will be held by Administrative Agent in a standard custodial account and shall constitute additional collateral for the Loan Obligations, and, upon the occurrence of an Event of Default, may be applied by Administrative Agent, in such order and manner as Administrative Agent may elect, to the reduction of the Loan Obligations. Borrower shall not be entitled to any interest earned on such additional collateral. Provided that there is no outstanding Default or Event of Default, such additional collateral which has not been applied to the Loan Obligations will be released by Administrative Agent at such time as Borrower provides Administrative Agent with evidence that the required Debt Service Coverage Ratio requirement outlined above has been achieved and maintained (without regard to any cash deposited pursuant to this Section) for two (2) consecutive calendar quarters.

4 15 **Occupancy Covenant** Commencing with the calendar quarter ending June 30, 2015, for the quarter ending on such date, and for all remaining quarters until the Loan is paid in full, maintain or cause to be maintained at all times, an average occupancy for the Facility, of eighty percent (80%) or more based on the number of units, each based upon the 3-month period of such quarter.

4 16 **Management Agreements** Obtain Administrative Agent's approval of any Management Agreement should Borrower elect to enter into a Management Agreement in lieu of self-managing the Facility, and thereafter, following such approval, maintain the Management Agreement in full force and effect and timely perform all of Borrower's obligations thereunder and enforce performance of all obligations of Manager thereunder and not permit the termination, amendment or assignment of the Management Agreement unless the prior written consent of Administrative Agent is first obtained, which consent may be in the sole and absolute discretion of Administrative Agent. Borrower will cause any Manager to execute a subordination agreement in form acceptable to Administrative Agent.

4 17 **Updated Appraisals** For so long as the Loan remains outstanding, if any Event of Default shall occur hereunder, or if, in Administrative Agent's or Required Lenders' judgment, a material depreciation in the value of the Land and/or the Improvements shall have occurred, then in any such event, Administrative Agent, may cause the Land and Improvements to be appraised by an appraiser selected by Administrative Agent, and in accordance with Administrative Agent's appraisal guidelines and procedures then in effect, and Borrower agrees to cooperate in all respects with such appraisals and furnish to the appraisers all requested information regarding the Land and Improvements and the Facility. Borrower agrees to pay all reasonable costs incurred by Administrative Agent and/or Lenders in connection with such appraisal which costs shall be secured by the Mortgage and shall accrue interest at the Default Rate until paid.

4 18 **Comply with Covenants and Laws** Comply, in all material respects, with all applicable covenants and restrictions of record and all laws, ordinances, rules and regulations and keep the Facility and the Land and Improvements in compliance with all applicable laws, ordinances, rules and regulations, including, without limitation, the Americans with Disabilities Act and regulations promulgated thereunder, and laws, ordinances, rules and regulations relating to zoning, health, building codes, setback requirements, Medicaid and Medicare (if applicable) laws and keep the Permits for the Facility in full force and effect.

4 19 **Taxes and Other Charges** Subject to Borrower's right to contest the same as set forth in the Mortgage, pay all taxes, assessments, charges, claims for labor, supplies, rent, and other obligations which, if unpaid, might give rise to a Lien against real or personal property of Borrower, except Liens to the extent permitted by this Agreement.

4 20 **Certificate** Upon Administrative Agent's written request, furnish Administrative Agent with a certificate stating that Borrower has complied with and is in compliance with all terms, covenants and conditions of the Loan Documents to which Borrower is a party and that there exists no Default or Event of Default or, if such is not the case, that one or more specified events have occurred, and that the representations and warranties contained herein are true and correct with the same effect as though made on the date of such certificate.

4 21 **Notice of Fees or Penalties** Immediately notify Administrative Agent, upon Borrower's knowledge thereof, of the assessment by any state or federal health or licensing agency of any fines or penalties against Borrower or the Facility.

4 22 **Loan Closing Certification** Immediately notify Administrative Agent in writing, in the event any representation or warranty contained in that certain Loan Closing Certification of even date herewith, executed by Borrower for the benefit of Administrative Agent, becomes untrue or there shall have been any material adverse change in any such representation or warranty.

4 23 **Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws** Borrower shall comply with all Requirements of Law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Upon Administrative Agent's request from time to time during the term of the Loan, Borrower shall certify in writing to Administrative Agent and Lenders that Borrower's representations,

warranties and obligations under Section 3 28, Section 3 29, and this Section remain true and correct and have not been breached Borrower shall immediately notify Administrative Agent and Lenders in writing if any of such representations, warranties or covenants are no longer true or have been breached or if Borrower has a reasonable basis to believe that they may no longer be true or have been breached In connection with such an event, Borrower shall comply with all Requirements of Law and directives of Governmental Authorities and, at Administrative Agent's request, provide to Administrative Agent and Lenders copies of all notices, reports and other communications exchanged with, or received from, Governmental Authorities relating to such an event Borrower shall also reimburse Administrative Agent and Lenders any expense incurred by Administrative Agent or any Lender in evaluating the effect of such an event on the Loan and Administrative Agent's and Lenders' interest in the collateral for the Loan, in obtaining any necessary license from Governmental Authorities as may be necessary for Administrative Agent and Lenders to enforce their rights under the Loan Documents, and in complying with all Requirements of Law applicable to Administrative Agent or any Lender as the result of the existence of such an event and for any penalties or fines imposed upon Administrative Agent or any Lender as a result thereof

4 24 Capital Expenditures Maintain the Facility in good condition and for each calendar year, make minimum capital expenditures for the Facility in an amount equal to \$400 per unit per annum (which capital expenditures may include ordinary repairs and routine maintenance), and, within forty-five (45) days after the end of each such calendar year, provide evidence thereof satisfactory to Administrative Agent In the event that Borrower shall fail to meet such requirement or to provide such evidence, Borrower shall, upon Administrative Agent's written request, immediately establish and maintain a capital expenditures reserve fund with Administrative Agent equal to the difference between the required amount per unit and the amount per unit actually spent by Borrower Borrower grants to Administrative Agent a lien on and a right of setoff against all moneys in the capital expenditures reserve fund, and Borrower shall not permit any other Lien to exist upon such fund Moneys on deposit in such capital expenditures reserve fund will be disbursed to Borrower monthly upon Administrative Agent's receipt of satisfactory evidence that Borrower has caused to be made the required capital expenditures Upon Borrower's failure to adequately maintain the Facility in good condition, Administrative Agent may, but shall not be obligated to, make such capital expenditures and may apply the moneys in the capital expenditures reserve fund for such purpose To the extent there are insufficient moneys in such capital expenditures reserve fund for such purposes, all funds advanced by Administrative Agent to make such capital expenditures shall constitute a portion of the Loan Obligations, shall be secured by the Mortgage and shall accrue interest at the Default Rate until paid Upon the occurrence of an Event of Default, Administrative Agent may apply any moneys in the capital expenditures reserve fund to the Loan Obligations, in such order and manner as Administrative Agent may elect For any partial calendar year during which the Loan is outstanding, the required expenditure amount shall be prorated by multiplying the required amount per unit by a fraction, the numerator of which is the number of days during such year for which all or part of the Loan is outstanding and the denominator of which is the number of days in such year During the term of the Loan, Administrative Agent may, from time to time, engage a professional building inspector to conduct an inspection of the Facility If the inspector's report indicates that repairs or replacements are necessary over and above the \$400 per unit requirement in this Section, then Administrative Agent shall require a non-interest bearing repair escrow fund to ensure completion of such necessary repairs or replacements The amount of any

such repair escrow fund shall be one hundred twenty percent (120%) of the estimated cost of repairs as determined by such Inspector and Administrative Agent. Administrative Agent also shall require an agreement satisfactory to Administrative Agent, in its commercially reasonable discretion, which will provide for completion of the repairs and the disbursement of the escrow funds. All fees and costs associated with the inspection, report and subsequent inspections (if required) shall be paid by Borrower.

ARTICLE V NEGATIVE COVENANTS OF BORROWER

Until the Loan Obligations have been paid in full, Borrower shall not

5 1 Assignment of Licenses and Permits Assign or transfer any of its interest in any Permits or Reimbursement Contracts (including rights to payment thereunder) pertaining to the Facility, or assign, transfer, or remove or permit any other Person to assign, transfer, or remove any records pertaining to the Facility including, without limitation, resident records, medical and clinical records (except for removal of such resident records as directed by the residents owning such records), without Administrative Agent's prior written consent, which consent may be granted or refused in Administrative Agent's sole discretion.

5 2 No Liens; Exceptions Create, incur, assume or suffer to exist any Lien upon or with respect to the Facility, any of its properties, rights, income or other assets relating thereto, including, without limitation, the Mortgaged Property whether now owned or hereafter acquired, other than the following permitted Liens ("Permitted Encumbrances")

(a) Liens at any time existing in favor of Administrative Agent,

(b) Liens, zoning violations and/or encroachments which are listed in Schedule 5 2 attached hereto,

(c) Inchoate Liens arising by operation of law for the purchase of labor, services, materials, equipment or supplies, provided payment shall not be delinquent and, if such Lien is a lien upon any of the Land or Improvements, such Lien must be fully disclosed to Administrative Agent and bonded off and removed from the Land and Improvements within thirty (30) days of its creation, in a manner satisfactory to Administrative Agent,

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, leases and contracts (other than for money borrowed or for credit received with respect to property acquired) entered into in the ordinary course of business as presently conducted or to secure obligations for surety or appeal bonds, and

(e) Liens for current year's taxes, assessments or governmental charges or levies provided payment thereof shall not be delinquent

5 3 Merger, Consolidation, etc Except as otherwise provided in the Mortgage, consummate any merger, consolidation or similar transaction, or sell, assign, lease or otherwise

dispose of (whether in one transaction or in a series of transactions), all or substantially all of its assets (whether now or hereafter acquired), without the prior written consent of Administrative Agent, which consent may be granted or refused in Administrative Agent's sole discretion

5 4 Maintain Single Purpose Entity Status

- (a) Engage in any business or activity other than the ownership, operation and maintenance of the Mortgaged Property, and activities incidental thereto,
- (b) Acquire or own any material assets other than (i) the Mortgaged Property, and (ii) such incidental machinery, equipment, fixtures and other personal property as may be necessary for the operation of the Mortgaged Property,
- (c) Merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets (except as permitted in the Loan Documents) or change its legal structure, without in each case Administrative Agent's consent,
- (d) Without the prior written consent of Administrative Agent, amend, modify, terminate or fail to comply with the provisions of its articles or certificate of formation or operating agreement or similar organizational document, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect its status as a Single Purpose Entity or its ability to perform its obligations hereunder, under the Note or any other document evidencing or securing the Loan,
- (e) Own any subsidiary or make any investment in, any Person without the consent of Administrative Agent,
- (f) Commingle its funds or assets with assets of, or pledge its assets with or for, any of its members, managers, Affiliates, principals or any other Person,
- (g) Incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Loan and trade payables incurred in the ordinary course of business, payable within a reasonable date from the date incurred, based on historical amounts,
- (h) Fail to maintain its records, books of account and bank accounts separate and apart from those of its members, managers, principals and Affiliates, the Affiliates of any of its members, managers or principals and any other Person,
- (i) Enter into any contract or agreement with any of its members, managers, principals or Affiliates, or the Affiliates of any of its members, managers or principals, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties,
- (j) Seek its dissolution or winding up in whole, or in part,

(k) Maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any of its members, managers, principals and Affiliates, the Affiliates of any of its members, managers or principals or any other Person,

(l) Hold itself out to be responsible for the debts of another Person or pay another Person's liabilities out of its own funds,

(m) Make any loans or advances to any third party, including any of its members, managers, principals or Affiliates, or the Affiliates of any of its members, managers or principals,

(n) Fail to have prepared and filed its own tax returns,

(o) Fail either to hold itself out to the public as a legal Person separate and distinct from any other Person or to conduct its business solely in its own name, in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that it is responsible for the debts of any third party (including any of its members, managers, principals or Affiliates, or any member, manager, principal or Affiliate thereof), or

(p) Fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

5 5 **Change of Business** Make any material change in the nature of its business as it is being conducted as of the date hereof

5 6 **Changes in Accounting** Change its methods of accounting, unless such change is permitted by GAAP, and provided such change does not have the effect of curing or preventing what would otherwise be an Event of Default or Default had such change not taken place

5 7 **ERISA**

(a) Agree to, enter into or consummate any transaction which would render it unable to confirm that (i) it is not an "employee benefit plan" as defined in Section 3(32) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA, (ii) it is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans, and (iii) less than twenty-five percent (25%) of each of its outstanding class of equity interests are held by "benefit plan investors" within the meaning of 29 C F R § 2510 3-101(f)(2),

(b) Engage in a non-exempt prohibited transaction described in Section 406 of ERISA or Section 4975 of the Code, as such sections relate to Borrower, or in any transaction that would cause any obligation or action taken or to be taken hereunder (or the exercise by Administrative Agent of any of its rights under the Loan Documents) to be a non-exempt prohibited transaction under ERISA

5 8 **Transactions with Affiliates.** Enter into any transaction with a Person which is an Affiliate of Borrower other than in the ordinary course of its business and on fair and reasonable terms no less favorable to Borrower, than those they could obtain in a comparable arms-length transaction with a Person not an Affiliate

5 9 **Transfer of Ownership Interests** Except as otherwise allowable under the Mortgage, permit a change in the percentage ownership interest of the Borrower or the Persons owning Borrower, unless either (a) the Guarantor, or a trust which is controlled by Guarantor, maintains greater than 50% of such ownership interests in Borrower, or (b) the written consent of Administrative Agent is first obtained, which consent may be granted or refused in Administrative Agent's sole discretion

5 10 **Change of Use; Leases** Alter or change the use of the Facility or enter into any operating lease for the Facility, unless Borrower first notifies Administrative Agent and provides Administrative Agent a copy of the proposed lease agreement, obtains Administrative Agent's written consent thereto, which consent may be withheld in Administrative Agent's sole discretion, and obtains and provides Administrative Agent with a subordination or subordination, nondisturbance and attornment agreement in form satisfactory to Administrative Agent, as determined by Administrative Agent in its sole discretion, from such lessee

5 11 **Place of Business** Change its chief executive office or its principal place of business without first giving Administrative Agent at least thirty (30) days prior written notice thereof and promptly providing Administrative Agent such information and amendatory financing statements as Administrative Agent may request in connection therewith

5 12 **Acquisitions** Directly or indirectly, purchase, lease, manage, own, operate, or otherwise acquire any property or other assets (or any interest therein) which are not used in connection with the operation of the Facility

5 13 **Dividends, Distributions and Redemptions** Declare or pay any distributions to its shareholders, members or managers, as applicable, or purchase, redeem, retire, or otherwise acquire for value, any ownership interests in Borrower now or hereafter outstanding, return any capital to its shareholders, members or managers, as applicable, or make any distribution of assets to its shareholders, members or managers, as applicable (any of the foregoing, "Distributions"), that is either (a) made while an Event of Default exists that has not been cured, (b) made after receipt of notice of a Default that has not been cured, or (c) made during a quarter wherein the minimum Debt Service Coverage Ratio (and treating such distribution as though it were an operating expense), tested as of end of such quarter, will not be achieved

ARTICLE VI ENVIRONMENTAL HAZARDS

6 1 **Prohibited Activities and Conditions** Except for matters covered by a written program of operations and maintenance approved in writing by Administrative Agent (an "O&M Program") or matters described in Section 6.2, Borrower shall not cause or permit to exist any of the following

(a) The presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials in, on or under the Land, any Improvements, or any other property of Borrower that is adjacent to the Land in violation of applicable Hazardous Materials Laws,

(b) The transportation of any Hazardous Materials to, from, or across the Land,

(c) Any occurrence or condition on the Land or in the Improvements or any other property of Borrower that is adjacent to the Land, which occurrence or condition is or may be in violation of Hazardous Materials Laws,

(d) Any violation of or noncompliance with the terms of any Environmental Permit with respect to the Land, the Improvements or any property of Borrower that is adjacent to the Land, or

(e) Any Lien (whether or not such Lien has priority over the Lien created by the Mortgage) upon the Land or any Improvements imposed pursuant to any Hazardous Materials Laws

The matters described in clauses (a) through (e) above are referred to collectively in this Article VI as "**Prohibited Activities and Conditions**" and individually as a "**Prohibited Activity and Condition**."

6 2 Exclusions Notwithstanding any other provision of this Article VI to the contrary, "Prohibited Activities and Conditions" shall not include the safe and lawful use and storage of quantities of (a) pre-packaged supplies, medical waste, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable facilities, (b) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by occupants of the Facility, and (c) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Land's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws

6 3 Preventive Action Borrower shall take all appropriate steps (including the inclusion of appropriate provisions in any occupancy agreements which are executed after the date of this Agreement) to prevent its employees, agents, contractors, tenants and occupants of the Facility from causing or permitting any Prohibited Activities and Conditions

6 4 O & M Program Compliance If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and cause all employees, agents and contractors of Borrower and any other Persons (excluding trespassers) present on the Land to comply with the O&M Program. All costs of performance of Borrower's obligations under any O&M Program shall be paid by Borrower, and Administrative Agent's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance shall be paid by Borrower upon demand by Administrative Agent. Any such out-of-pocket costs of Administrative Agent which Borrower fails to pay promptly shall become an additional part of the Loan Obligations

6 5 Borrower's Environmental Representations and Warranties Borrower represents and warrants to Administrative Agent that, to Borrower's actual knowledge, except as previously disclosed by Borrower to Administrative Agent and Lenders in writing or disclosed in that certain Phase I Environmental Assessment prepared by Terracon Consultants, Inc and dated May 15, 2013

(a) Borrower has not at any time caused or permitted any Prohibited Activities and Conditions

(b) No Prohibited Activities and Conditions exist or have existed

(c) The Land and the Improvements do not now contain any underground storage tanks, and the Land and the Improvements have not contained any underground storage tanks in the past If there is an underground storage tank located on the Land or the Improvements which has been previously disclosed by Borrower to Administrative Agent in writing, that tank complies with all requirements of Hazardous Materials Laws

(d) Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials, relating to the Land Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Land and the Improvements in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect During Borrower's ownership of the Land, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, no event has occurred with respect to the Land and/or Improvements that constitutes or, with the passing of time or the giving of notice, would constitute, noncompliance with the terms of any Environmental Permit

(e) There are no actions, suits, claims or proceedings pending or threatened that involve the Land and/or the Improvements and allege, arise out of, or relate to any Prohibited Activity and Condition

(f) Borrower has not received any written complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Land, the Improvements or any other property of Borrower that is adjacent to the Land The representations and warranties in this Article VI shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the Loan evidenced by the Note and until all of the Loan Obligations have been paid in full

6 6 Notice of Certain Events Borrower shall promptly notify Administrative Agent in writing of any and all of the following that may occur

(a) Borrower's discovery of any Prohibited Activity and Condition

(b) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any Governmental Authority or other Person with regard to present or future alleged Prohibited Activities and Conditions or any other environmental,

health or safety matters affecting the Land, the Improvements or any other property of Borrower that is adjacent to the Land

(c) Any representation or warranty in this Article VI which becomes untrue at any time after the date of this Agreement

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Agreement, the Note, or any of the other Loan Documents

6 7 Costs of Inspection Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("Environmental Inspections") required by Administrative Agent or Required Lenders in connection with any foreclosure or deed in lieu of foreclosure or, if required by Administrative Agent or Required Lenders, as a condition of Administrative Agent's consent to any "Transfer" (as defined in the Mortgage), or required by Administrative Agent following a commercially reasonable determination by Administrative Agent that Prohibited Activities and Conditions may exist. Any such costs incurred by Administrative Agent and Lenders (including the reasonable fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Loan Obligations. The results of all Environmental Inspections made by Administrative Agent shall at all times remain the property of Administrative Agent, and Administrative Agent shall have no obligation to disclose the results of information to others, except that, upon written request by Borrower following an Environmental Inspection for which Borrower has reimbursed Administrative Agent, Administrative Agent shall provide copies or otherwise make available to Borrower at Borrower's request copies of any test results or any other information obtained by Administrative Agent in connection with its Environmental Inspections. Administrative Agent hereby reserves the right, and Borrower hereby expressly authorizes Administrative Agent, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Administrative Agent with respect to the Mortgaged Property. Borrower consents to Administrative Agent notifying any party (either as part of a notice of sale or otherwise) of the results of any of Administrative Agent's Environmental Inspections. Borrower acknowledges that Administrative Agent cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that neither Administrative Agent nor any Lender shall have any liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Administrative Agent and Lenders from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the such delivery of any of Administrative Agent's Environmental Inspections.

6 8 Remedial Work If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("Remedial Work") is necessary to bring Borrower into compliance with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Land, the Improvements or the use, operation or improvement of the Land under any Hazardous Materials Law, Borrower shall, by the earlier of (a) the applicable

deadline required by Hazardous Materials Law or (b) thirty (30) days after notice from Administrative Agent demanding such action and Borrower's receipt of any and all necessary permits (which permits Borrower hereby agrees it shall diligently pursue), begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete such work by the time required by applicable Hazardous Materials Law If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Administrative Agent may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Administrative Agent on demand for the cost of doing so Any reimbursement due from Borrower to Administrative Agent shall become part of the Loan Obligations

6 9 **Cooperation with Governmental Authorities** Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity and Condition

6 10 **Indemnity**

(a) Borrower shall hold harmless, defend and indemnify (i) Administrative Agent, (ii) each Lender, (iii) any prior owner or holder of the Note, (iv) any Person who is or will have been involved in the servicing of the Note, (v) the officers, directors, members, managers, agents, shareholders, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (together, the "Environmental Indemnitees") from and against all proceedings, claims, damages, losses, expenses, penalties and costs (whether initiated or sought by any Governmental Authority or private parties), including fees and out of pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following

- (i) Any breach of any representation or warranty of Borrower in this Article VI,
- (ii) Any failure by Borrower to perform any of its obligations under this Article VI,
- (iii) The existence or alleged existence of any Prohibited Activity and Condition,
- (iv) The presence or alleged presence of Hazardous Materials in, on, around or under the Land, the Improvements or any property of Borrower that is adjacent to the Land, or
- (v) The actual or alleged violation of any Hazardous Materials Law

(b) Counsel selected by Borrower to defend Environmental Indemnitees shall be subject to the approval of those Environmental Indemnitees Notwithstanding anything contained herein, any Environmental Indemnitee may elect to defend any claim or legal or administrative proceeding at Borrower's expense Nothing contained herein shall prevent an

Environmental Indemnitee from employing separate counsel in any such action at any time and participating in the defense thereof at its own expense

(c) Borrower shall not, without the prior written consent of those Environmental Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "Claim") settle or compromise the Claim if the settlement (i) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Administrative Agent of a written release of those Environmental Indemnitees, satisfactory in form and substance to Administrative Agent, or (ii) may materially and adversely affect any Environmental Indemnitee, as determined by such Environmental Indemnitee in its sole discretion

(d) The liability of Borrower to indemnify the Environmental Indemnitees shall not be limited or impaired by any of the following, or by any failure of Borrower or Guarantor or other obligor to receive notice of or consideration for any of the following

(i) Any amendment or modification of any Loan Document,
(ii) Any extensions of time for performance required by any of the
Loan Documents,

(iii) The accuracy or inaccuracy of any representations and warranties made by Borrower under this Agreement or any other Loan Document,

(iv) The release of Borrower or any other Person, by Administrative Agent or Lenders or by operation of law, from performance of any obligation under any of the
Loan Documents,

(v) The release or substitution in whole or in part of any security for
the Loan Obligations, or

(vi) Administrative Agent's failure to properly perfect any lien or
security interest given as security for the Loan Obligations, or

(vii) Any provision in any of the Loan Documents limiting
Administrative Agent's or Lenders' recourse to property securing the Loan or limiting the
personal liability of Borrower or any party for payment of all or any part of the Loan

(e) Borrower shall, at its own cost and expense, do all of the following

(i) Pay or satisfy any judgment or decree that may be entered against
any Environmental Indemnitee or Environmental Indemnitees in any legal or administrative
proceeding incident to any matters against which Environmental Indemnitees are entitled to be
indemnified under this Article VI,

(ii) Reimburse Environmental Indemnitees for any expenses paid or
incurred in connection with any matters against which Environmental Indemnitees are entitled to
be indemnified under this Article VI, and

(iii) Reimburse Environmental Indemnitees for any and all expenses, including fees and costs of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Environmental Indemnitees of their rights under this Article VI, or in monitoring and participating in any legal or administrative proceeding

(f) In any circumstances in which the indemnity under this Article VI applies, Administrative Agent may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Administrative Agent, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned) may settle or compromise any action or legal or administrative proceeding Borrower shall reimburse Administrative Agent upon demand for all costs and expenses incurred by Administrative Agent, including all costs of settlements entered into in good faith, and the reasonable fees and out of pocket expenses of such attorneys and consultants

(g) The provisions of this Article VI shall be in addition to any and all other obligations and liabilities that Borrower may have under the applicable law or under the other Loan Documents, and each Environmental Indemnitee shall be entitled to indemnification under this Article VI without regard to whether Administrative Agent or that Environmental Indemnitee has exercised any rights against the Land and/or the Improvements or any other security, pursued any rights against Guarantor or other obligor, or pursued any other rights available under the Loan Documents or applicable law If Borrower consists of more than one Person or entity, the obligation of those Persons or entities to indemnify the Environmental Indemnitees under this Article VI shall be joint and several The obligations of Borrower to indemnify the Environmental Indemnitees under this Article VI shall survive any repayment or discharge of the Loan Obligations, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Mortgage

ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

71 **Events of Default** The occurrence of any one or more of the following shall constitute an "Event of Default" hereunder

(a) The failure by Borrower to pay any installment of principal, interest, or other payments required under the Note, the Mortgage or any other Loan Document within ten (10) days after the same becomes due,

(b) Any failure by Borrower to provide and maintain in full force and effect the insurance coverage required by Section 4 5(a) – (j), inclusive, of this Agreement,

(c) The violation by Borrower of any covenant set forth in Article V hereof,

(d) The failure by Borrower to deliver or cause to be delivered the financial statements and information set forth in Section 4 7 of this Agreement within the times required, and such failure is not cured within thirty (30) days following Administrative Agent's written notice to Borrower thereof,

(e) The failure of the Facility to maintain either the required Debt Service Coverage Ratio or timely provide evidence thereof to Administrative Agent, as required by Section 4 14, unless such failure to maintain the same is timely cured as provided in such Section,

(f) The failure of Borrower or Guarantor to properly and timely to perform or observe any covenant or condition set forth in this Agreement (other than those specified in this Section), including, without limitation, any other covenants set forth in Article IV hereof or any covenant of the other Loan Documents, 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 to Borrower of such Default, provided, however, that if such Default cannot be cured within such thirty (30) day period, such cure period shall be extended for an additional sixty (60) days, as long as Borrower is diligently and in good faith prosecuting said cure to completion,

(g) The filing by Borrower or Guarantor of a voluntary petition, or the adjudication of any of the aforesaid Persons, or the filing by any of the aforesaid Persons of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or if any of the aforesaid Persons should seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator for itself or of all or any substantial part of its property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or the mailing of any general assignment for the benefit of creditors or the admission in writing by any of the aforesaid Persons of its inability to pay its debts generally as they become due,

(h) The entry by a court of competent jurisdiction of an order, judgment, or decree approving a petition filed against Borrower or Guarantor which petition seeks any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of any of the aforesaid Persons or of all or any substantial part of its properties or of any or all of the rents, revenues, issues, earnings, profits or income thereof which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive),

(i) Unless otherwise permitted hereunder or under any other Loan Documents, the sale, transfer, lease, assignment, or other disposition, voluntarily or involuntarily, of the Mortgaged Property, or any part thereof, except for Permitted Encumbrances as described in Section 5 2 above, or any further encumbrance of the Mortgaged Property (except for Permitted Encumbrances), unless the prior written consent of Administrative Agent is obtained,

(j) Any certificate, statement, representation, warranty or audit heretofore or hereafter furnished by or on behalf of Borrower or Guarantor or any of their respective officers, directors or trustees pursuant to or in connection with this Agreement (including, without

limitation, representations and warranties contained herein) or in any Loan Documents or as an inducement to Lenders to make the Loan to Borrower, (i) proves to have been false in any material respect at the time when the facts therein set forth were stated or certified, or (ii) proves to have omitted any substantial contingent or unliquidated liability or claim against Borrower or Guarantor or (iii) on the date of execution of this Agreement there shall have been any materially adverse change in any of the acts previously disclosed by any such certificate, statement, representation, warranty or audit, which change shall not have been disclosed to Administrative Agent and Lenders in writing at or prior to the time of such execution,

(k) The failure of Borrower to correct, within the time deadlines set by any applicable licensing agency or reimbursement program, any deficiency which would result in the following actions by such agency with respect to the Facility,

- (i) a termination of any Reimbursement Contract,
- (ii) a termination of any Permit, or
- (iii) a ban on admissions,

(l) The final assessment against Borrower or the Facility of any fines or penalties by any state or federal health or licensing agency having jurisdiction over such Persons or the Facility in excess of \$100,000 for any single assessment unless the same is discharged, and the event resulting in the assessed fine or penalty has been cured to the Administrative Agent's satisfaction,

(m) A final judgment is rendered by a court of law or equity against Borrower or Guarantor in excess of \$100,000.00, and the same remains undischarged for a period of thirty (30) days, unless such judgment is either (i) fully covered by collectible insurance and such insurer has within such period acknowledged such coverage in writing, or (ii) although not fully covered by insurance, enforcement of such judgment has been effectively stayed, such judgment is being contested or appealed by appropriate proceedings and Borrower or Guarantor, as the case may be, has established reserves adequate for payment in the event such Person is ultimately unsuccessful in such contest or appeal and evidence thereof is provided to Administrative Agent,

(n) The occurrence of any material adverse change in the financial condition or prospects of Borrower or Guarantor, or the existence of any other condition which, in Administrative Agent's reasonable determination, constitutes a material impairment of any such Person's ability to operate or manage the Facility or of such Person's ability to perform their respective obligations under the Loan Documents, which is not remedied within thirty (30) days after written notice, or

(o) The death or legal incompetency of Guarantor, unless a replacement guarantor acceptable to Administrative Agent and Lenders in their sole discretion executes and delivers to Administrative Agent, for the benefit of Lenders, within ninety (90) days following such death or legal incompetency a guaranty acceptable to Administrative Agent guaranteeing the payment and performance of the Loan Obligations previously guaranteed by the deceased or legally incompetent Guarantor,

(p) Any Event of Default pursuant to, and as defined in, any other Loan Document subject to any and all applicable cure periods

Notwithstanding anything in this Section, all requirements of notice shall be deemed eliminated if Administrative Agent is prevented from declaring an Event of Default by bankruptcy or other applicable law. The cure period, if any, shall then run from the occurrence of the event or condition of Default rather than from the date of notice.

7.2 Remedies Upon the occurrence of any one or more of the foregoing Events of Default, Administrative Agent may, at its option, and shall if directed to do so in writing by Required Lenders

(a) Declare the entire unpaid principal of the Loan Obligations to be, and the same shall thereupon become, immediately due and payable, without presentment, protest or further demand or notice of any kind, all of which are hereby expressly waived, and/or

(b) Proceed to protect and enforce its rights by action at law (including, without limitation, bringing suit to reduce any claim to judgment), suit in equity and other appropriate proceedings including, without limitation, for specific performance of any covenant or condition contained in this Agreement, and/or

(c) Exercise any and all rights and remedies afforded by the laws of the United States, the states in which any of the Mortgaged Property is located or any other appropriate jurisdiction as may be available for the collection of debts and enforcement of covenants and conditions such as those contained in this Agreement and the Loan Documents, and/or

(d) Exercise the rights and remedies of setoff and/or banker's lien against the interest of Borrower in and to every account and other property of Borrower which is in the possession of Administrative Agent, any Lender or any Person who then owns a participating interest in the Loan, to the extent of the full amount of the Loan, and/or

(e) Exercise its rights and remedies pursuant to any other Loan Documents

ARTICLE VIII ADMINISTRATIVE AGENT

8 1 **Appointment of Administrative Agent** Community & Southern Bank is hereby appointed the Administrative Agent and the collateral agent hereunder and under the other Loan Documents and each Lender hereby authorizes Community & Southern Bank, in such capacity, to act as its agent in accordance with the terms hereof and the other Loan Documents. Administrative Agent hereby agrees to act upon the express conditions contained herein and the other Loan Documents, as applicable. Except as specifically provided herein, the provisions of this Article are solely for the benefit of Administrative Agent and Lenders, and no Credit Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, Administrative Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Credit Party or any of its Related Parties.

8 2 **Powers and Duties; No Fiduciary Duty** Each Lender irrevocably authorizes Administrative Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to Administrative Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Administrative Agent shall have only those duties and responsibilities that are expressly specified herein and the other Loan Documents. Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents, sub-agents, affiliates or employees. The exculpatory provisions of this Agreement shall apply to any such agent, sub-agents, affiliates and employees of Administrative Agent and any such agent or sub-agent, and shall apply to their respective activities in connection with the activities of Administrative Agent. Administrative Agent shall not have, by reason hereof or any of the other Loan Documents, a fiduciary relationship or other implied duties (regardless of whether a Default or an Event of Default has occurred and is continuing) in respect of any Lender, and nothing herein or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon Administrative Agent any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein. Administrative Agent shall have no duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, is contrary to any Loan Document or Applicable Laws or, unless Administrative Agent receives indemnification from such Lender or Lenders with respect to such action that is reasonably satisfactory to Administrative Agent, that may expose Administrative Agent or any Related Party to liability.

8 3 **General Immunity.**

(a) **No Responsibility for Certain Matters** Neither Administrative Agent or any Related Party shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Loan

Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by or on behalf of any Credit Party to Administrative Agent or any Lender (including any information or documentation received by Administrative Agent from any Credit Party and provided by Administrative Agent to any Lender) in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Loan Obligations, nor shall Administrative Agent be required to ascertain or inquire as to (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Documents, (ii) the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents, (iii) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (iv) the satisfaction of any condition set forth herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, (v) the use of the proceeds of the Loan or any advance, (vi) the existence or possible existence of any Event of Default or Default, or to make any disclosures with respect to the foregoing. Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to Administrative Agent by the Borrower or a Lender. Except as expressly set forth in this Agreement and the other Loan Documents, Administrative Agent shall have no duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its Related Parties. Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, is contrary to any Loan Document or Applicable Laws or, unless Administrative Agent receives indemnification from such Lender or Lenders with respect to such action that is reasonably satisfactory to Administrative Agent, that may expose Administrative Agent or any Related Party to liability.

(b) Exculpatory Provisions. Neither Administrative Agent nor any of its Related Parties shall be liable to the Lenders for any action taken or omitted by Administrative Agent under or in connection with any of the Loan Documents (i) with the consent or at the request of the Required Lenders (or such other Lenders as may be required to give such instructions under Section 9.2) or (ii) in the absence of its own gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction. Administrative Agent shall be obligated on the terms set forth in this Agreement for performance of its express duties and obligations under this Agreement, to be performed in good faith. In performing its functions and duties under this Agreement, Administrative Agent shall exercise the same care which it would in dealing with loans for its own account. Administrative Agent may at any time request instructions from the Required Lenders or all affected Lenders with respect to any actions or approvals, which by the terms of this Agreement or any of the Loan Documents, Administrative Agent is permitted or required to take or to grant. Administrative Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until Administrative Agent shall have received instructions in respect thereof from the Required Lenders (or such other Lenders as may be required to give such instructions under Section 9.2) and, upon receipt of such

instructions from the Required Lenders (or such other Lenders, as the case may be), Administrative Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) Administrative Agent shall be entitled to rely upon, and shall be fully protected and not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and correct and to have been authenticated, signed or sent by the proper Person or Persons, (ii) Administrative Agent shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for a Credit Party and its Related Parties), accountants, experts and other professional advisors selected by it, and (iii) Administrative Agent may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of any advance that must by its terms be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such advance.

84 Administrative Agent Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, Administrative Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loan, Administrative Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder in its capacity as Administrative Agent, and the term "Lender" shall, unless the context clearly otherwise indicates, include Administrative Agent in its individual capacity. Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with any Credit Party or any of its Affiliates unrelated to the transactions contemplated by this Agreement as if it were not performing the duties specified herein, and may accept fees and other consideration from the Credit Parties for services in connection therewith without having to account for the same to the Lenders.

85 Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, (i) made its own independent investigation of the financial condition and affairs of the Borrower and its Related Parties in connection with Loan hereunder, (ii) made its own credit analysis and decision to enter into this Agreement, and (iii) made and shall continue to make its own appraisal of the creditworthiness of the Credit Parties and its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Administrative Agent shall have no duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of the Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the Closing Date or date of any advance or at any time or times thereafter, and Administrative Agent shall not have

any responsibility with respect to the accuracy of or the completeness of any information provided to the Lenders

(b) Each Lender, by delivering its signature page to this Agreement and funding its Percentage of the Loan, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by Administrative Agent, the Required Lenders or the Lenders, as applicable on the date of this Agreement

8 6 Right to Indemnity Each Lender, in proportion to its Percentage, severally agrees to indemnify Administrative Agent and each of its Related Parties (each, an "**Indemnitee Agent Party**"), to the extent that such Indemnitee Agent Party shall not have been reimbursed by any Credit Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnitee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Loan Documents or otherwise in its capacity as such Indemnitee Agent Party in any way relating to or arising out of this Agreement or the other Loan Documents, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory, or sole negligence of such Indemnitee Agent Party, provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Indemnitee Agent Party's gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction in a final, non-appealable order. If any indemnity furnished to any Indemnitee Agent Party for any purpose shall, in the opinion of such Indemnitee Agent Party, be insufficient or become impaired, such Indemnitee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished, provided, in no event shall this sentence require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Percentage share thereof, and provided, further, this sentence shall not be deemed to require any Lender to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence. All amounts due under this Section 8 6 shall be payable promptly after demand therefor

8 7 Successor Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower, which shall be effective on the date specified in its notice, but no sooner than thirty (30) days after the effective date of delivery of such notice. Upon any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor Administrative Agent, which shall be a bank with an office in the United States or an Affiliate of any such bank with an office in the United States. If no successor(s) shall have been so appointed by the Required Lenders and shall have accepted such appointments within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the Lenders shall perform all duties of the Administrative Agent under this

Agreement until such time, if any, as Lenders appoint a successor Administrative Agent Such resignation shall nonetheless become effective in accordance with such notice and upon the effective date of such resignation (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall transfer the collateral security either to a successor Administrative Agent or to one of the Lenders and (ii) all payments, communications and determinations provided to be made by, to or through the Administrative Agent and/or the Administrative Agent shall instead be made by or to each Lender directly until such time as the Required Lenders appoint a successor Administrative Agent as provided above Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that any Successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, any securities and other items of collateral held under the Security Instruments, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Loan Documents, and (ii) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Security Instruments, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (if not already discharged therefrom as provided above) After any retiring Administrative Agent's resignation hereunder as the Administrative Agent, the provisions of this Section shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent hereunder

(b) Notwithstanding anything herein to the contrary, the Administrative Agent may assign its rights and duties as the Administrative Agent hereunder to an Affiliate of Community & Southern Bank without the prior written consent of, or prior written notice to, the Borrower or the Lenders, provided, that the Borrower and the Lenders may deem and treat such assigning Administrative Agent as the Administrative Agent for all purposes hereof, unless and until such assigning the Administrative Agent, as the case may be, provides written notice to the Borrower and the Lenders of such assignment Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as the Administrative Agent hereunder and under the other Loan Documents

88 Loan Documents.

(a) Agent under Loan Documents Each Lender hereby further authorizes the Administrative Agent, on behalf of and for the benefit of the Lenders, to be the agent for and representative of the Administrative Agent and Lenders with respect to all collateral for the Loan Obligations and the Loan Documents, provided that the Administrative Agent shall not owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder of Loan Obligations with respect to any Loan Documents except as expressly provided herein Each Lender, by its signature hereto or by its signature to an Assignment Agreement, consents and agrees to all terms of the Loan Documents as such

agreements may be in effect or may be amended from time to time in accordance with their terms and agrees to be bound by such terms as they apply to Administrative Agent acting on behalf of such Lender. Without further written consent or authorization from the Lenders, but subject to the provisions of Section 9 2, the Administrative Agent may execute any documents or instruments necessary to (i) in connection with a sale or disposition of assets permitted by this Agreement, release or subordinate any lien or security interest encumbering any item of collateral that is the subject of a sale or other disposition of assets permitted by this Agreement or to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 9 2) have otherwise consented in writing, or (ii) release Guarantor from its Guaranty Agreement as a result of a transaction permitted hereunder or with respect to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 9 2) have otherwise consented in writing.

(b) Right to Realize on Collateral and Enforce Guarantees Administrative Agent shall have the sole and exclusive right and authority to (i) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection herewith and with the Loan Documents in connection with the Mortgaged Property, (ii) execute and deliver each Loan Document relating to the Mortgaged Property and accept delivery of each such agreement delivered by Borrower, (iii) act as collateral agent for Lenders for purposes of the perfection of all security interests and Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Mortgaged Property, (v) take such action as is necessary or desirable to maintain the perfection and priority of the security interests and Liens created or purported to be created by the Loan Documents relating to the Mortgaged Property, and (vi) except as may be otherwise specifically restricted by the terms of this Agreement or of any other Loan Document, exercise all right and remedies given to Administrative Agent and Lenders with respect to the Mortgaged Property under the Loan Documents relating thereto, applicable law or otherwise. Anything contained in any of the Loan Documents to the contrary notwithstanding, the Credit Parties, the Administrative Agent and each holder of the Loan Obligations hereby agree that (A) no Lender shall have any right individually to realize upon any of the collateral or to enforce any Guaranty Agreement or other Loan Document against any Credit Party, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the holders of the Loan Obligations in accordance with the terms hereof and all powers, rights and remedies under the Loan Documents may be exercised solely by Administrative Agent, and (B) in the event of a foreclosure or Uniform Commercial Code sale by the Administrative Agent with respect to any of the collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Lender may be the purchaser of any or all of such collateral at any such sale or other disposition and the Administrative Agent, as agent for and representative of the Administrative Agent and Lenders collectively (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the collateral sold at any such public sale, to use and apply any of the Loan Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale or other disposition.

8 9 Lenders' Obligation for Expenses To the extent that the Borrower for any reason fails to pay any amount required under Section 2 16 or Section 9 1 to be paid by it to

Administrative Agent (or any sub-agent thereof, or any Related Party of any of the foregoing), each Lender severally agrees to pay to Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Percentage share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided, that the reimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for Administrative Agent (or any such sub-agent) in connection with such capacity. All amounts due under this Section shall be paid promptly after demand therefore, provided that all rights of Administrative Agent under Section 2.16 or Section 9.1 to be paid shall inure to the benefit of and be receivable by Lenders.

8.10 Cooperation; Third Party Reports Following an Event of Default, Lenders and Administrative Agent will consult and cooperate in good faith with one another to determine an acceptable course of action. As part of the analysis in determining a proposed course of action, Administrative Agent will coordinate obtaining any reappraisal, audit, environmental investigation, market study, property condition assessment or other third party report, each to the extent reasonably requested by any Lender.

ARTICLE IX MISCELLANEOUS

9.1 Indemnification Borrower shall, at its sole cost and expense, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) imposed upon or incurred by or asserted against Administrative Agent or any Lender by reason of (a) ownership of the Note, the Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents, (b) any amendment to, or restructuring of, the Loan Obligations and/or any of the Loan Documents, (c) any and all lawful action that may be taken by Administrative Agent or Lenders in connection with the enforcement of the provisions of the Mortgage or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, Guarantor, any Manager and/or any partner, joint venturer, member or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding, (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Land, the Improvements or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways, (e) any use, nonuse or condition in, on or about the Land, the Improvements or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways, (f) any failure on the part of Borrower, Guarantor, or any Manager to perform or comply with any of the terms of this Agreement or any of the other Loan Documents, (g) any claims by any broker, Person or entity claiming to have participated in arranging the making of the Loan evidenced by the Note, (h) any failure of the Land and/or Improvements to be in compliance with any applicable laws, (i) performance of any labor or services or the furnishing of any materials or

other property with respect to the Land, the Improvements or any part thereof, (j) the failure of any Person to file timely with the Internal Revenue Service an accurate Form 1099-b, statement for recipients of proceeds from real estate, broker and barter exchange transactions, which may be required in connection with the Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which the Loan is made, (k) any misrepresentation made to Administrative Agent or any Lender in this Agreement or in any of the other Loan Documents, (l) any tax on the making and/or recording of the Mortgage, the Note or any of the other Loan Documents, (m) the violation of any requirements of the Employee Retirement Income Security Act of 1974, as amended, (n) any fines or penalties assessed or any corrective costs incurred by Administrative Agent if the Facility or any part of the Land and/or Improvements is determined to be in violation of any covenants, restrictions of record, or any applicable laws, ordinances, rules or regulations, or (o) the enforcement by any of the Indemnified Parties of the provisions of this Section other than with respect to any of the foregoing which result from the gross negligence or willful misconduct of Indemnified Party Any amounts payable to Administrative Agent or any Lender by reason of the application of this Section, shall become immediately due and payable, and shall constitute a portion of the Loan Obligations, shall be secured by the Mortgage and shall accrue interest at the Default Rate The obligations and liabilities of Borrower under this Section shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or exercise of a power of sale or delivery of a deed in lieu of foreclosure of the Mortgage For purposes of this Section, the term "**Indemnified Parties**" means Administrative Agent, Lenders and any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan, any Person in whose name the encumbrance created by the Mortgage is or will have been recorded, any Person who may hold or acquire or will have held a full or partial interest in the Loan (including, without limitation, any investor in any securities backed in whole or in part by the Loan) as well as the respective directors, officers, shareholders, managers, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, without limitation, any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Mortgaged Property, whether during the term of the Mortgage or as a part of or following a foreclosure of the Loan and including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of such Person's assets and business)

9.2 Amendments and Waivers.

(a) Required Lenders' Consent Subject to Section 9.2(b) and Section 9.2(c), no amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of the Administrative Agent and the Required Lenders, provided that (i) the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement to cure any ambiguity, omission, defect or inconsistency, so long as such amendment, modification or supplement does not adversely affect the rights of any Lender, (ii) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, give any direction or vote upon any matter submitted to a vote of Lenders, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender, (iii) each Lender is entitled to vote as such Lender sees fit on any

bankruptcy reorganization plan that affects the Loan, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (iv) the Required Lenders shall determine whether or not to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders

(b) Affected Lenders' Consent Without the written consent of each Lender (other than a Defaulting Lender) that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would

(i) extend the Maturity Date other than any extension to which Borrower is specifically entitled under the Loan Documents,

(ii) waive, reduce or postpone any scheduled repayment or alter the application of funds pursuant to Section 2.20, as applicable,

(iii) reduce the principal of or the rate of interest on the Loan (other than any waiver of the imposition of the Default Rate pursuant to Section 2.6) or any fee or premium payable hereunder, provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate,

(iv) extend the time for payment of any principal, interest or fees,

(v) increase the principal amount of the Loan, or reduce the principal amount of the Loan through a forgiveness of debt,

(vi) amend, modify, terminate or waive any provision of this Section 9.2 or any other provision of this Agreement that expressly provides that the consent of all Lenders is required,

(vii) change the percentage of the outstanding principal amount of the Loan that is required for the Lenders or any of them to take any action hereunder or amend the definition of "Required Lenders" or modify the amount of the Commitment of any Lender,

(viii) release all or substantially all of the collateral or release Borrower from its obligations under this Agreement or any other Loan Document or release Guarantor from its Guaranty Agreement, except as expressly provided in the Loan Documents,

(ix) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Loan Document,

provided, that for the avoidance of doubt, all Lenders shall be deemed directly affected by any amendment described in this subsections (b)(vi) through (ix) above

(c) Other Consents No amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Credit Party therefrom, shall

(i) increase any Commitment of any Lender over the amount thereof then in effect without the consent of such Lender, provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute an increase in any Commitment of any Lender,

(ii) amend, modify, terminate or waive any provision of Article VIII as the same applies to Administrative Agent, or any other provision hereof as the same applies to the rights or obligations of Administrative Agent, in each case without the consent of Administrative Agent, or

(iii) amend, modify or waive this Agreement so as to alter the ratable treatment of Loan Obligations arising under the Loan Documents

(d) Execution of Amendments, etc. The Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

9.3 Successors and Assigns, Participations

(a) Generally No Credit Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, Environmental Indemnitees under Section 6.10, Indemnitee Agent Parties under Section 8.6, and Indemnified Parties under Section 9.1, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register Each Credit Party, the Administrative Agent and the Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loan listed therein for all purposes hereof, and, subject to Section 9.3(g), no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following receipt of an Assignment Agreement effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 9.3(d). Each assignment shall be recorded in the Register on the Business Day the Assignment Agreement is received by the Administrative Agent, if received by 12:00 noon, and on the following Business Day if received after such time, prompt notice thereof shall be provided to the Borrower and a copy of such Assignment Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the "**Assignment Effective Date**." Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the

Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitment or interest in the Loan

(c) Right to Assign Each Lender shall have the right at any time, upon prior written notice to Administrative Agent, to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment owing to it or other Loan Obligations (provided, however, that each such assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of the Loan and related Commitment)

(i) to any Person meeting the criteria of clause (i) of the definition of the term of "Eligible Assignee" upon the giving of notice to the Borrower and the Administrative Agent, and

(ii) to any Person otherwise constituting an Eligible Assignee with the consent of the Administrative Agent and, at any time no Default or Event of Default then exists and is continuing, the Borrower (which consent shall not be unreasonably withheld, conditioned or delayed), provided, each such assignment pursuant to this Section shall be in an aggregate amount of not less than \$3,000,000.00 (or such lesser amount as may be agreed to by the Borrower and the Administrative Agent or as shall constitute the aggregate amount of the Commitment and Loan of the assigning Lender) with respect to the assignment of the Commitment and Loan

(d) Mechanics Assignments and assumptions of an interest in the Loan and Commitments by the Lenders shall be effected by manual execution and delivery to the Administrative Agent of an Assignment Agreement. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to the Administrative Agent such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be reasonably required to deliver by Administrative Agent, together with payment to the Administrative Agent of a registration and processing fee of \$3,500 unless waived by the Administrative Agent in its sole discretion

(e) Representations and Warranties of Assignee Each assignee Lender succeeding to an interest in the Commitment and Loan by assignment and assumption represents and warrants as of the Closing Date or as of the applicable Assignment Effective Date that (i) it is an Eligible Assignee, (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitment or Loan, as the case may be and (iii) it will make or invest in, as the case may be, its Commitment and share of the Loan for its own account in the ordinary course of its business and without a view to distribution of such Commitment or interest in the Loan within the meaning of the federal securities laws (it being understood that, subject to the provisions of this Section, the disposition of such Commitment or Loan or any interests therein shall at all times remain within its exclusive control)

(f) Effect of Assignment Subject to the terms and conditions of this Section, as of the applicable "Assignment Effective Date" with respect to any assignee and assignor (i) such assignee shall have the rights and obligations of a "Lender" hereunder to the extent of its

interest in the Loan and Commitment as reflected in the Register and shall be a party hereto and a "Lender" for all purposes hereof with respect to the interest assigned, in addition to any interests hereunder it may theretofore hold as a Lender, (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date, provided, anything contained in any of the Loan Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities of a Lender hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder), (iii) the Commitments and Loan shall be modified to reflect any Commitment and interest in the Loan of such assignee and of such assigning Lender, if any, and (iv) if any such assignment occurs after the issuance of any Note to the assigning Lender, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Note to the Administrative Agent for cancellation, and thereupon the Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Commitment and/or Loan of the assignee and/or the assigning Lender

(g) Participations

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than a natural person or any of the Credit Parties or any of their Related Parties) in all or any part of its Commitment, the Loan or in any other Obligation,

(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not have any voting rights under this Agreement and shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver requiring consent of such Lender pursuant to Section 9.2 that would (A) extend the Maturity Date or the maturity of any Notes in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or the Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or (C) release all or substantially all of the collateral under the Loan Documents (except as expressly provided in the Loan Documents) or the Guarantor, if any, supporting the Loan Obligations hereunder in which such participant is participating,

(iii) Each participant shall be subject to Section 2.21 as though it were a Lender, and

(iv) In the event of a sale by a Lender of a participating interest to a participant, (1) such Lender's obligations under this Agreement shall remain unchanged for all purposes, (2) Administrative Agent and Borrower shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (3) all amounts payable by Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. No Lender shall enter into a participation agreement with a participant that conflicts with the provisions of Section 9 3(g), and any Lender selling a participation interest shall include within the participation agreement such participant's agreement to the provisions of this Section 9 3(g)

9 4 **Certain Other Assignments.** In addition to any other assignment or participation permitted pursuant to this Section, any Lender may assign, pledge and/or grant a security interest in, all or any portion of its interest in the Loan, the other Loan Obligations owed to such Lender, and its Note, if any, to secure obligations of such Lender including obligations to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank, provided, no Lender, as between the Credit Parties and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided, further, in no event shall the applicable Federal Reserve Bank, pledgee or trustee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder

9 5 **Waiver** No remedy conferred upon, or reserved to, Administrative Agent in this Agreement or any of the other Loan Documents is intended to be exclusive of any other remedy or remedies, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity. Exercise of or omission to exercise any right of Administrative Agent shall not affect any subsequent right of Administrative Agent to exercise the same. No course of dealing between Borrower and Administrative Agent or any delay on Lender's part in exercising any rights shall operate as a waiver of any of Administrative Agent's rights. No waiver of any Default under this Agreement or any of the other Loan Documents shall extend to or shall affect any subsequent or other, then existing, Default or shall impair any rights, remedies or powers of Administrative Agent

9 6 **Costs and Expenses** Borrower will reimburse Administrative Agent for all fees and expenses, including reasonable attorneys' fees, in connection with the preparation of this Agreement and the other Loan Documents (including any amendments hereafter made), and in connection with any modifications thereto and the recording of any of the Loan Documents. Borrower will bear all other taxes, fees and expenses (other than any taxes measured by the income of a Lender) (including reasonable attorneys' fees and expenses of counsel for Lenders) in connection with the Loan. If, at any time, a Default occurs or Administrative Agent or any Lender becomes a party to any suit or proceeding in order to protect its interests or priority in any collateral for any of the Loan Obligations or its rights under this Agreement or any of the Loan Documents, or if Administrative Agent or any Lender is made a party to any suit or proceeding by virtue of the Loan, this Agreement or any Mortgaged Property and as a result of any of the foregoing, Administrative Agent or such Lender employs counsel to advise or provide other representation with respect to this Agreement, or to collect the balance of the Loan Obligations, or to take any action in or with respect to any suit or proceeding relating to this Agreement, any of the other Loan Documents, any Mortgaged Property, Borrower, Guarantor, or

any Manager, or to protect, collect, or liquidate any of the security for the Loan Obligations, or attempt to enforce any security interest or lien granted to Administrative Agent by any of the Loan Documents, then in any such events, all of the reasonable attorney's fees arising from such services, including reasonable attorneys' fees for preparation of litigation and in any appellate or bankruptcy proceedings, and any expenses, costs and charges relating thereto shall constitute additional obligations of Borrower to Administrative Agent and Lenders payable on demand of Administrative Agent. Without limiting the foregoing, Borrower has undertaken the obligation for payment of, and shall pay, all recording and filing fees, revenue or documentary stamps or taxes, intangibles taxes, and other taxes, expenses and charges payable in connection with this Agreement, any of the Loan Documents, the Loan Obligations, or the filing of any financing statements or other instruments required to effectuate the purposes of this Agreement, and should Borrower fail to do so, Borrower agrees to reimburse Administrative Agent for the amounts paid by Administrative Agent, together with penalties or interest, if any, incurred by Administrative Agent as a result of underpayment or nonpayment. Such amounts shall constitute a portion of the Loan Obligations, shall be secured by the Mortgage and shall bear interest at the Default Rate from the date advanced until repaid.

9 7 **Performance of Administrative Agent** At its option, upon Borrower's failure to do so following the giving of written notice by Administrative Agent (except that no notice shall be required if Administrative Agent, in its good faith opinion, deems prompt action necessary to protect or preserve the Mortgaged Property or Administrative Agent's rights therein), Administrative Agent may make any payment or do any act on Borrower's behalf that Borrower or others are required to do to remain in compliance with this Agreement or any of the other Loan Documents, and Borrower agrees to reimburse Administrative Agent, on demand, for any payment made or expense incurred by Administrative Agent pursuant to the foregoing authorization, including, without limitation, attorneys' fees, and until so repaid any sums advanced by Administrative Agent shall constitute a portion of the Loan Obligations, shall be secured by the Mortgage and shall bear interest at the Default Rate from the date advanced until repaid.

9 8 **Headings** The headings of the Sections of this Agreement are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

9 9 **Survival of Covenants** All covenants, agreements, representations and warranties made herein and in certificates or reports delivered pursuant hereto shall be deemed to have been material and relied on by Administrative Agent and Lenders, notwithstanding any investigation made by or on behalf of Administrative Agent or any Lender, and shall survive the execution and delivery to Administrative Agent and Lenders of the Note and this Agreement.

9 10 **Notices, etc** Any notice or other communication required or permitted to be given by this Agreement or the other Loan Documents or by applicable law shall be in writing and shall be deemed received (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below) with receipt acknowledged by the recipient thereof, (b) three (3) Business Days following the date deposited in U S certified mail, postage prepaid, return receipt requested, or (c) one (1) Business Day following the date deposited with FedEx or other overnight carrier, and in each case addressed as follows:

If to Borrower

Mallard Cove Senior Development, LLC
1 McKnight Place
St Louis, Missouri 63124
Attention Mr David A Smith

with a copy to

Thomas Smallwood
Stinson Leonard Street LLP
7700 Forsyth Boulevard
Suite 1100
St Louis, Missouri 63105

If to the initial Lenders

Community & Southern Bank
3333 Riverwood Parkway
Suite 350
Atlanta, Georgia 30339
Attention Ms Kelly Harrison

If to the Administrative Agent

Community & Southern Bank
3333 Riverwood Parkway
Suite 350
Atlanta, Georgia 30339
Attention Ms Kelly Harrison

with a copy to

Dwight L Mixson, Jr
Burr & Forman LLP
420 North 20th Street
Suite 3400
Birmingham, Alabama 35203

Notices to other Lenders shall be given in accordance with the requirements of this Section to their respective addresses set forth in the Assignment Agreements Any party may change its address to another single address by notice given as herein provided, except any change of address notice must be actually received in order to be effective

9.11 Benefits All of the terms and provisions of this Agreement shall be the Borrower and its respective successors and assigns No Person other than Borrower, the Administrative Agent and Lenders shall be entitled to rely upon this Agreement or be entitled to the benefits of this Agreement

9 12 Supersedes Prior Agreements, Counterparts This Agreement and the instruments referred to herein supersede and incorporate all representations, promises and statements, oral or written, made by Administrative Agent or any Lender in connection with the Loan. This Agreement may not be varied, altered, or amended except by a written instrument executed by an authorized officer of Administrative Agent and, as specified herein, the Lenders or Required Lenders. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

9 13 Loan Agreement Governs The Loan is governed by the terms and provisions set forth in this Loan Agreement and the other Loan Documents and in the event of any irreconcilable conflict between the terms of the other Loan Documents and the terms of this Loan Agreement, the terms of this Loan Agreement shall control, provided, however, that in the event that there is any apparent conflict between any particular term or provision which appears in both this Loan Agreement and the other Loan Documents and it is possible and reasonable for the terms of both this Loan Agreement and the Loan Documents to be performed or complied with, then, notwithstanding the foregoing, both the terms of this Loan Agreement and the other Loan Documents shall be performed and complied with.

9 14 CONTROLLING LAW. THE PARTIES HERETO AGREE THAT THE VALIDITY, INTERPRETATION, ENFORCEMENT AND EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF GEORGIA AND THE PARTIES HERETO SUBMIT (AND WAIVE ALL RIGHTS TO OBJECT) TO NON-EXCLUSIVE PERSONAL JURISDICTION IN THE STATE OF GEORGIA FOR THE ENFORCEMENT OF ANY AND ALL OBLIGATIONS UNDER THE LOAN DOCUMENTS EXCEPT THAT IF ANY SUCH ACTION OR PROCEEDING ARISES UNDER THE CONSTITUTION, LAWS OR TREATIES OF THE UNITED STATES OF AMERICA, OR IF THERE IS A DIVERSITY OF CITIZENSHIP BETWEEN THE PARTIES THERETO, SO THAT IT IS TO BE BROUGHT IN A UNITED STATES DISTRICT COURT, IT SHALL BE BROUGHT IN COBB COUNTY, GEORGIA, OR IN THE UNITED STATES DISTRICT COURT HAVING JURISDICTION IN ANY COUNTY IN WHICH ANY OF THE LAND IS LOCATED.

9 15 Rights Cumulative None of the rights and remedies herein conferred upon or reserved to Administrative Agent is intended to be exclusive of any other right or remedy contained herein or in any of the other Loan Documents and each and every such right and remedy shall be cumulative and concurrent, and may be enforced separately, successively or together, and may be exercised from time to time as often as may be deemed necessary or desirable by Administrative Agent.

9 16 Service of Process, Court Costs. BORROWER HEREBY IRREVOCABLY DESIGNATES DAVID A. SMITH, AS MANAGER, AND HIS SUCCESSORS IN OFFICE, AS THE TRUE AND LAWFUL ATTORNEY OF BORROWER FOR THE PURPOSE OF RECEIVING SERVICE OF ALL LEGAL NOTICES AND PROCESS ISSUED BY ANY COURT IN THE STATE OF OHIO AS WELL AS SERVICE OF ALL PLEADINGS AND OTHER DOCUMENTS RELATED TO ANY LEGAL PROCEEDING

OR ACTION ARISING OUT OF THE LOAN. BORROWER AGREES THAT SERVICE UPON SAID PERSON (OR HIS SUCCESSOR IN SUCH OFFICE) SHALL BE VALID REGARDLESS OF BORROWER'S WHEREABOUTS AT THE TIME OF SUCH SERVICE AND REGARDLESS OF WHETHER BORROWER RECEIVES A COPY OF SUCH SERVICE, PROVIDED THAT ADMINISTRATIVE AGENT SHALL HAVE MAILED A COPY TO BORROWER IN ACCORDANCE WITH THE NOTICE PROVISIONS HEREIN. BORROWER AGREES TO PAY ALL COURT COSTS AND REASONABLE ATTORNEY'S FEES INCURRED BY ADMINISTRATIVE AGENT IN CONNECTION WITH ENFORCING ANY PROVISION OF THE LOAN DOCUMENTS. NOTWITHSTANDING THE FOREGOING, ADMINISTRATIVE AGENT AGREES TO USE REASONABLE EFFORTS TO PROVIDE BORROWER WITH NOTICE OF THE FILING OF ANY LAWSUIT BY ADMINISTRATIVE AGENT AGAINST BORROWER.

9 17 **Offset.** Upon the occurrence of an Event of Default, Administrative Agent or any Lender may set-off against any principal and interest owing hereunder, any and all credits, money, stocks, bonds or other security or property of any nature whatsoever on deposit with, or held by, or in the possession of, Administrative Agent or such Lender, to the credit of or for the account of Borrower, without notice to or consent of Borrower or Guarantor

9 18 **Relationship.** Borrower, Administrative Agent and Lenders intend that the relationship between them shall be solely that of debtor and creditors. Nothing contained in this Agreement or in any of the other Loan Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between Borrower with Administrative Agent or any Lender

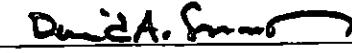
9 19 **Time of Essence.** Time is of the essence with respect to the payment and performance of all Loan Obligations

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be properly executed by their respective duly authorized representatives as of the date first above written

BORROWER

**MALLARD COVE SENIOR DEVELOPMENT,
LLC, a Missouri limited liability company**

BY



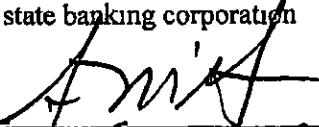
David A. Smith
Its Manager

[Signatures continued on following page]

LENDER:

COMMUNITY & SOUTHERN BANK,
a Georgia state banking corporation

BY _____
Print Name _____
Its _____


Steve McCabe
SVP

ADMINISTRATIVE AGENT.

COMMUNITY & SOUTHERN BANK,
a Georgia state banking corporation

BY _____
Print Name _____
Its _____

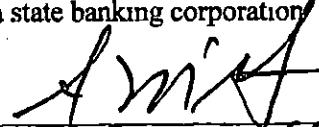

Steve McCabe
SVP

EXHIBIT "A"

LEGAL DESCRIPTION

ALL THOSE CERTAIN TRACT(S) OR PARCEL(S) OF LAND SITUATED IN THE CITY OF SHARONVILLE AND TOWNSHIP OF Sycamore, COUNTY OF HAMILTON AND STATE OF OHIO, AND KNOWN AS BEING PARCELS A, B AND C OF CONSOLIDATION PLAT FOR MALLARD COVE SENIOR DEVELOPMENT, LLC, RECORDED AS PLAT BOOK 432 OF MAPS, PAGE 28 AND ALSO RECORDED IN OFFICIAL RECORD 11921, PAGE 1664 OF HAMILTON COUNTY, OHIO RECORDS, IN SECTION 36, TOWN 4, ENTIRE RANGE 1, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGINNING AT AN EXISTING SPIKE AT THE INTERSECTION OF THE CENTERLINE OF MALLARD COVE DRIVE WITH THE CENTERLINE OF LIPPELMAN ROAD,

THENCE ALONG THE CENTERLINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST, 459 63 FEET TO A SET MAG NAIL AND THE REAL PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT,

THENCE CONTINUING ALONG THE CENTERLINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST 170 00 FEET TO A SET MAG NAIL,

THENCE LEAVING THE CENTERLINE OF LIPPELMAN ROAD, NORTH 87°44'00" WEST, 30 00 FEET TO A SET 5/8" IRON PIN AND CAP IN THE WESTERLY RIGHT OF WAY OF LIPPELMAN ROAD,

THENCE ALONG THE WESTERLY LINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST, 30 00 FEET TO A SET 5/8" IRON PIN AND CAP AT THE NORTHEAST CORNER OF THE PROPERTY AS CONVEYED TO AMS REAL ESTATE LLC IN OFFICIAL RECORD 10968, PAGE 968 OF THE HAMILTON COUNTY, OHIO RECORDS, SAID POINT BEING THE CENTERLINE OF CLINTON STREET (AS NOW VACATED),

THENCE ALONG THE NORtherly LINE OF SAID AMS REAL ESTATE TRACT AND THE CENTERLINE OF CLINTON STREET (AS NOW VACATED), NORTH 87°44'00" WEST, 630 12 FEET TO AN EXISTING IRON PIN AND CAP,

THENCE LEAVING THE NORtherly LINE OF SAID AMS REAL ESTATE TRACT AND THE CENTERLINE OF CLINTON STREET (AS NOW VACATED), NORTH 01°31'09" EAST, 629 63 FEET TO THE SOUTHWEST CORNER OF GARDEN PLACE SUBDIVISION AS RECORDED IN PLAT BOOK 325, PAGE 12 OF THE HAMILTON COUNTY, OHIO RECORDS, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN (BENT) WHICH IS 0 96' SOUTH AND 0 17' WEST, THENCE ALONG THE SOUTHERLY LINE OF GARDEN PLACE SUBDIVISION AND ITS EASTERN EXTENSION, SOUTH 87°44'00" EAST, 430 12 FEET TO A SET 5/8" IRON PIN AND CAP IN THE SOUTHERLY RIGHT OF WAY OF MALLARD COVE DRIVE, SAID POINT BEING THE NORTHWEST CORNER OF THE PROPERTY AS CONVEYED TO RONALD A LIPEZ & STANLEY CLAYBON IN OFFICIAL RECORD 10494, PAGE 1060 OF THE HAMILTON COUNTY, OHIO RECORDS,

THENCE LEAVING THE SOUTHERLY RIGHT OF WAY OF MALLARD COVE DRIVE, ALONG THE WESTERLY LINE OF SAID LIPEZ & CLAYBON TRACT AND THE WESTERLY LINE OF

THE PROPERTY AS CONVEYED TO ANANT P & SWADESH K SINGH IN OFFICIAL RECORD 10742, PAGE 910 OF THE HAMILTON COUNTY, OHIO RECORDS, SOUTH 01°31'09" WEST, 155 00 FEET TO A SET 5/8" IRON PIN AND CAP,

THENCE CONTINUING ALONG THE WESTERLY LINE OF SAID SINGH TRACT, THE FOLLOWING TWO COURSES AND DISTANCES, SOUTH 24°14'54" WEST, 64 70 FEET TO A SET 5/8" IRON PIN AND CAP AND SOUTH 01°31'09" WEST, 50 00 FEET TO THE SOUTHWEST CORNER OF SAID SINGH TRACT, SAID POINT BEING IN THE NORTHERLY LINE OF THE PROPERTY AS CONVEYED TO DAVID J FRANZ IN OFFICIAL RECORD 11482, PAGE 1733 OF THE HAMILTON COUNTY OHIO, RECORDS AND BEING WITNESSED BY AN EXISTING PIN AND CAP, WHICH IS 0 26 FEET NORTH,

THENCE LEAVING THE WESTERLY LINE OF SAID SINGH TRACT, ALONG THE NORTHERLY LINE OF SAID FRANZ TRACT, NORTH 87°44'00" WEST, 25 00 FEET TO THE NORTHWEST CORNER OF SAID FRANZ TRACT, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN AND CAP, WHICH IS 0 26 FEET NORTH AND 0 12 FEET EAST,

THENCE ALONG THE WEST LINE OF SAID FRANZ TRACT AND THE WESTERLY LINE OF THE PROPERTY AS CONVEYED TO BAMP PROPERTIES, LLC IN OFFICIAL RECORD 9195, PAGE 3837 OF THE HAMILTON COUNTY, OHIO RECORDS, SOUTH 01°31'09" WEST, 164 63 FEET TO THE SOUTHWEST CORNER OF THE BAMP TRACT, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN AND CAP, WHICH IS 0 31 FEET SOUTH AND 0 28 FEET WEST, THENCE ALONG THE SOUTHERLY LINE OF BAMP TRACT, SOUTH 87°44'00" EAST, (PASSING A SET 5/8" IRON PIN AND CAP AT 250 00 FEET) 280 00 FEET TO THE PLACE OF BEGINNING, THUS CONTAINING 7 0170 ACRES OF LAND

BEARINGS USED IN THIS LEGAL DESCRIPTION ARE BASED ON RANDOM BEARING SYSTEM RELATIVE TO THE EXISTING DEED OF RECORD AS RECORDED IN OFFICIAL RECORD 10896, PAGE 1238 OF THE HAMILTON COUNTY, OHIO RECORDS

THE ABOVE DESCRIBED REAL ESTATE IS ALL OF THE SAME PREMISES CONVEYED TO MALLARD COVE SENIOR DEVELOPMENT, LLC BY LIMITED WARRANTY DEED FROM NATIONWIDE HEALTH PROPERTIES, INC RECORDED IN OFFICIAL RECORD 10896, PAGE 1238 AND GENERAL WARRANTY DEED FROM BAMP PROPERTIES, LLC RECORDED IN OFFICIAL RECORD 11837, PAGE 990 OF THE HAMILTON COUNTY, OHIO RECORDS, BEING THE RESULT OF A SURVEY AND PLAT DATED JANUARY 5, 2012, MADE BY STEPHEN L CAHILL, PLS, OF ABERCROMBIE & ASSOCIATES, INC, OHIO REGISTERED SURVEYOR NUMBER 7862

TOGETHER WITH, RESERVATION OF EASEMENT AND GRANT OF EASEMENT RECORDED AS OFFICIAL RECORD 7045, PAGE 1408 OF HAMILTON COUNTY, OHIO RECORDS

EXHIBIT "B"

ASSIGNMENT AGREEMENT

This Assignment Agreement (this "Assignment") is dated as of the Effective Date set forth below and is entered into by and between _____, a _____ (the "Assignor") and _____ (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement identified below (as amended, the "Loan Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively, as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment, without representation and warranty by the Assignor.

1 **Assignor**

2 **Assignee**

3 **Borrower** Mallard Cove Senior Development, LLC

4 **Administrative Agent** Community & Southern Bank, as the administrative agent under the Loan Agreement

5 **Loan Agreement** Loan Agreement dated as of April 6, 2015, between the Borrower, the Lenders thereto, and Community & Southern Bank, as Administrative Agent

6 **Assigned Interest**

| <u>Assignor</u> | <u>Assignee</u> | <u>Aggregate Amount of Commitments/Loans for All Lenders</u> | <u>Amount of Commitments/Loans <u>Assigned</u></u> | <u>Percentage of Assigned Commitments/Loans</u> |
|-----------------|-----------------|--|--|---|
| | | | | |

Effective Date _____, 20____

The terms set forth in this Assignment are hereby agreed to

ASSIGNOR

a _____

BY _____
Name _____
Title _____

ASSIGNEE

a _____

BY _____
Name _____
Title _____

Address/Telephone

Consented to and Accepted

COMMUNITY & SOUTHERN BANK,
a Georgia banking corporation, as
Administrative Agent

BY _____
Name _____
Title _____

[If required]
Consented to

**MALLARD COVE SENIOR DEVELOPMENT,
LLC, a Missouri limited liability company**

BY _____
Name _____
Title _____

ANNEX 1 to Assignment
STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT

Representations and Warranties

Assignor The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby, and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Documents, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Credit Parties or their Related Parties or any other person obligated in respect of any Loan Document, or (iv) the performance or observance by the Credit Parties or any other Person of any of their respective obligations under any Loan Document

Assignee The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it meets all requirements of an Eligible Assignee under the Loan Agreement (subject to receipt of such consents as may be required under the Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, and (iv) it has received a copy of the Loan Agreement, together with copies of the most recent financial statements delivered pursuant to the Loan Agreement, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations that by the terms of the Loan Documents are required to be performed by it as a Lender

Payments From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts that have accrued to but excluding the Effective Date and to the Assignee for amounts that have accrued from and after the Effective Date

General Provisions This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment. This Assignment shall be governed by, and construed in accordance with, the law of the State of Georgia.

SCHEDULE 1.1

| <u>Lender Name</u> | <u>Commitment</u> | <u>Percentage</u> |
|---------------------------|-------------------|-------------------|
| Community & Southern Bank | \$23,500,000 00 | 100% |

SCHEDULE 3.6

Mallard Cove Senior Living, a 159-unit seniors housing facility consisting of 125 assisted living facility units and 34 memory care units

SCHEDULE 3.16

**BORROWER'S PRINCIPAL PLACES OF BUSINESS
AND CHIEF EXECUTIVE OFFICE**

Chief Executive Office

1 McKnight Place
St Louis, Missouri 63124

Principal Place of Business

Mallard Cove Senior Development, LLC
1410 Mallard Cove Drive
Sharonville, Ohio 45246

SCHEDULE 3.20
OWNERSHIP INTERESTS IN BORROWER

46 2/3% Jonathan R Levey
26 2/3% David A Smith Revocable Trust u/t/a dated February 24, 2003
26 2/3% Alexandra M Fisher Living Trust dated June 1, 2004

****As contemplated in Section 3.30 of the Loan Agreement, contemporaneously or immediately following the Closing Date, the Ownership Interests in Borrower will be as follows**

68% Jonathan R Levey
16% David A Smith Revocable Trust u/t/a dated February 24, 2003
16% Alexandra M Fisher Living Trust dated June 1, 2004

SCHEDULE 4.8
COMPLIANCE CERTIFICATE

Community & Southern Bank
3333 Riverwood Parkway
Suite 350
Atlanta, Georgia 30339
Attention Ms Kelly Harrison

Re Loan Agreement dated as of April 6, 2015 (together with amendments, if any, the "Loan Agreement"), by and between Community & Southern Bank, as Administrative Agent, the Lenders party thereto, and Mallard Cove Senior Development, LLC, as Borrower

The undersigned officer of the above-named Borrower, does hereby certify that for the quarterly financial period ending _____

- 1 No Default or Event of Default has occurred or exists except _____
2 The Debt Service Coverage Ratio for the Facility after deduction of Assumed Management Fees for the preceding _____ (____) months through the end of such period is

Required 1 25 to 1 0
Actual ____ to 1 0

The manner of calculation is attached hereto.

- 3 The average occupancy for the quarter ending _____ was

Required 80%
Actual ____ %

The manner of calculation is attached hereto.

- 4 All representations and warranties made by Borrower in the Loan Agreement and in other Loan Documents are true and correct in all material respects as though given on the date hereof, except _____

- 5 All information provided herein is true and correct

- 6 Capitalized terms not defined herein shall have the meanings given to such terms in the Loan Agreement

Dated this _____ day of _____, 20_____

By _____
Name _____
Title _____

SCHEDULE 5.2
PERMITTED LIENS

None

EXHIBIT A-2

AMENDMENT TO LOAN DOCUMENTS

THIS AMENDMENT TO LOAN DOCUMENTS (this "*Amendment*") dated as of May 29, 2020, is entered into by and among MALLARD COVE SENIOR DEVELOPMENT, LLC, a Missouri limited liability company ("*Borrower*"), JONATHAN LEVEY ("*Guarantor*"), and BANK OZK (F/K/A BANK OF THE OZARKS, successor by merger to COMMUNITY & SOUTHERN BANK), an Arkansas corporation ("*Administrative Agent*") and as sole Lender ("*Lender*").

RECITALS:

Borrower, Lender and Administrative Agent entered into that certain Loan Agreement dated as of April 6, 2015 (the "*Loan Agreement*"), pursuant to which Lender agreed to make a loan to Borrower in the principal amount of \$23,500,000.00 (the "*Loan*"). Any capitalized term used, but not otherwise defined, in this Amendment has the meaning assigned to that term in the Loan Agreement. Guarantor has guaranteed Borrower's obligations with respect to the Loan pursuant to his Guaranty Agreement, subject to the limitation stated in the Guaranty Agreement.

The Loan Documents were supplemented and amended by that certain Cash Collateral Security Agreement dated as of June 28, 2017 (the "*Cash Collateral Agreement*") and that certain Waiver and Modification Agreement dated as of June 28, 2017 (the "*Waiver Agreement*"). Borrower and Guarantor have requested that Administrative Agent and Lender amend the Loan Agreement, Guaranty Agreement and other Loan Documents in certain respects, and Administrative Agent and Lender have agreed to do so as hereinafter provided.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the agreements of Administrative Agent and Lender herein, Borrower and Guarantor represent and warrant to Administrative Agent and Lender and agree with Administrative Agent and Lender, and Administrative Agent and Lender agree with Borrower and Guarantor, as follows:

1. Effective Date. Borrower and Lender intend that this Amendment is to be effective as of April 10, 2020, regardless of the date on which any party actually executes and delivers this Amendment (the "*Effective Date*").

2. Extension of Original Maturity Date. Borrower and Lender agree that the definition of the term "Maturity Date" appearing in Section 2.14 of the Loan Agreement is hereby amended and restated as follows:

"*Maturity Date*" shall mean April 10, 2021.

3. Amendment to Interest Rate Provisions. From and after the Effective Date, Section 2.5 of the Loan Agreement, currently titled "Note Rate and Note Rate Adjustment Dates", is amended and restated in its entirety as follows:

2.5 Note Rate. Subject to the provisions of Section 2.6 below regarding the Default Rate, the principal amount

outstanding from time to time under the Loan shall bear interest at the fixed rate per annum of 5.00% (the “*Note Rate*”).

The replacement Note Rate is a fixed rate; therefore, the periodic adjustments to the Note Rate shall not longer apply. Further, Section 2.8 of the Loan Agreement is deleted in its entirety.

4. Monthly Payments. From and after the Effective Date, Section 2.11 of the Loan Agreement is amended and restated to read as follows (and the May 10, 2020 payment shall be due in advance upon execution of this Amendment):

2.11 Note Payments and Payment Dates. Commencing on May 10, 2020 and continuing on the tenth (10th) day of each successive month thereafter, provided that if the tenth (10th) day of any month is not a Business Day, such payment shall be due and payable on the immediately preceding Business Day (each being a “**Payment Date**”), Borrower shall pay to Administrative Agent, for further payment to Lenders consecutive monthly payments of principal and interest in the amount of \$137,378.66 plus any other amounts due under the Loan Documents.

5. Loan Reduction. Contemporaneously herewith, Borrower will prepay or has paid the outstanding principal balance of the Loan by \$662,122.77.

6. Release of Cash Collateral Agreement. Pursuant to the Cash Collateral Agreement, Guarantor established a reserve cash account with Administrative Agent, the current balance being \$572,774.00 (the “*Cash Collateral*”). Borrower and Guarantor agree that the Cash Collateral shall be or has been applied toward the loan reduction described in Section 5 above, and thereafter, the Cash Collateral Agreement is terminated.

7. Future Loan Payments. After giving effect to the application of principal set forth in Section 4, the outstanding principal balance following the April 10, 2020 payment is \$20,000,000.00. For purposes of future monthly payments due under the Loan Agreement, beginning with the payment due May 10, 2020, Borrower will continue to pay \$137,378.66 per month on the tenth (10th) day of each successive calendar month to be applied first to accrued and unpaid interest and the balance to principal.

8. Waiver and Temporary Modification. In consideration of the agreements herein, and subject to the conditions herein, Lender and Administrative Agent agree that the Lender and Administrative Agent (a) waive the breach by Borrower of any covenants in Section 4.14 and/or Section 4.15 of the Loan Agreement occurring prior to or currently existing as of the Effective Date, and (b) temporarily modify the covenants in Section 4.14(a) and Section 4.15 of the Loan Agreement from and after the Effective Date such that the minimum Debt Service Coverage Ratio and the Occupancy Covenant shall be suspended through the Maturity Date (as defined herein) (such covenant modifications are referred to herein as the “**Temporary Modifications**”). If the Loan has not been repaid as of the Maturity Date, then for the quarter ending June 30, 2021, and all subsequent quarters, such covenants are automatically reinstated and shall apply in accordance with the terms as originally set forth in the Loan Agreement. The Temporary Modifications will terminate and the covenants set forth in the Loan Agreement will be automatically reinstated if (a) Borrower fails to timely comply with the reporting provisions of

Sections 4.7 of the Loan Agreement, or (b) any other Event of Default (after giving effect to any applicable notice and cure or grace period) occurs pursuant to the Loan Agreement.

9. Collection of Previously Deferred Interest and Unpaid Legal Fees. Borrower shall contemporaneously herewith pay to Administrative Agent outstanding legal fees in the amount of \$1,180.00 related to the plat modification in early 2019. Borrower reaffirms its obligation to pay Additional Interest (as defined in the Waiver Agreement) of \$31,393.47 upon the earlier of the Maturity Date or payment in full of the Loan.

10. Increase of Guaranty. The next to last sentence of Section 1.(a) of the Guaranty Agreement (beginning with "Notwithstanding anything to the contrary...") is hereby deleted in its entirety. From and after the Effective Date, Guarantor's guarantee is increased, and Guarantor guarantees one hundred percent (100%) of the Guaranty Obligations (as defined in the Guaranty Agreement).

11. Amendment to Other Loan Documents. Borrower, Guarantor, Administrative Agent and Lender further agree that the Note and the Security Deed are hereby amended *mutatis mutandis* to reflect the extension of the Maturity Date and the other modifications to the Loan Agreement, as set forth above.

12. Modification Fee; Lender's Expenses. In consideration of Administrative Agent's and Lender's agreement to modify the Loan Documents as set forth above, Borrower shall pay to Administrative Agent, concurrently with the execution and delivery of this Amendment, a non-refundable modification fee in the amount of \$30,000.00. In addition, Borrower shall pay or reimburse Administrative Agent for all costs and expenses incurred in relation to this Amendment, including, but not limited to, Lender's attorneys' fees and expenses.

13. Reaffirmation of Loan Documents. Except as expressly stated in this Amendment, the Loan Agreement, the Guaranty Agreement, and the other Loan Documents shall be and remain in full force and effect, without modification, and Borrower and Guarantor hereby ratify and reaffirm their respective obligations under the Loan Documents, as so amended by this Amendment. This Amendment constitutes a "Loan Document" for all purposes of the Loan Documents. The execution and delivery of this Amendment is not to be interpreted or construed as, and in fact does not constitute, a novation, payment, or satisfaction of all or any portion of the Loan or any other Loan Obligations; rather, this Amendment is strictly amendatory in nature. The Loan and the other Loan Obligations continue to be secured by the Mortgage and all other documents heretofore securing the Loan, without change in nature, amount, or priority. Borrower certifies to Administrative Agent and Lender that Borrower has no defense, claim, counterclaim, or rights of setoff or recoupment of any nature whatsoever with respect to its or his obligations under the Loan Documents, as herein amended.

14. Guarantor's Consent. Guarantor consents to the execution and delivery by Borrower of this Amendment and to the consummation of the transactions described therein and acknowledges and agrees that his obligations under the Guaranty Agreement shall not be limited, altered, released, discharged, or otherwise affected in any respect on account of the execution, delivery, and performance of this Amendment or any other matter relating thereto, except to the extent that the Guaranty Agreement is expressly amended pursuant to this Amendment. Guarantor certifies to Administrative Agent and Lender that he has no defense, claim,

counterclaim, or rights of setoff or recoupment of any nature whatsoever with respect to their obligations under the Guaranty Agreement, as herein amended.

15. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Georgia.

16. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

17. Headings. The headings of the paragraphs or sections of this Amendment have been included only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Amendment or be used in any manner in the interpretation of this Amendment.

18. Interpretation. Whenever the context so requires in this Amendment, all words used in the singular shall be construed to have been used in the plural (and vice versa), each gender shall be construed to include any other genders, and the word "person" shall be construed to include a natural person, a corporation, a firm, a liability company, a joint venture, a trust, an estate or any other entity.

19. Partial Invalidity. Each provision of this Amendment shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Amendment or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Amendment, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability.

20. Due Execution. Enforceability. Borrower represents and warrants to Administrative Agent and Lender that this Amendment has been duly authorized, executed and delivered pursuant to all necessary action and constitutes a valid and legally binding obligation of Borrower enforceable in accordance with its terms.

[Signatures begin on the next page]

IN WITNESS WHEREOF, Borrower and Guarantor have executed this Amendment under seal effective as of the day and year first above written.

Borrower:

**MALLARD COVE SENIOR DEVELOPMENT,
LLC, a Missouri limited liability company**

BY: JN L

Name: JONATHAN R LEVEY

Title: MANAGING MEMBER

[Seal]

Guarantor:

JONATHAN LEVEY

[Seal]

IN WITNESS WHEREOF, Administrative Agent and Lender have executed this Amendment under seal as of the date first set forth above.

Administrative Agent:

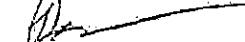
BANK OZK,
an Arkansas corporation

By: 
Name: Rick Dowdy
Title: Vice President

[Seal]

Lender:

BANK OZK,
an Arkansas corporation

By: 
Name: Rick Dowdy
Title: Vice President

[Seal]

EXHIBIT A-3

ORIGINAL

AMENDMENT TO LOAN AGREEMENT

THIS AMENDMENT TO LOAN AGREEMENT (this "Amendment") dated as of October 10, 2021, is entered into by and among MALLARD COVE SENIOR DEVELOPMENT, LLC, a Missouri limited liability company ("Borrower"), JONATHAN LEVEY ("Guarantor"), and BANK OZK (F/K/A BANK OF THE OZARKS, successor by merger to COMMUNITY & SOUTHERN BANK), an Arkansas corporation ("Administrative Agent") and as sole Lender ("Lender").

R E C I T A L S:

Borrower, Lender and Administrative Agent entered into that certain Loan Agreement dated as of April 6, 2015 and amended by Amendment to Loan Documents dated May 29, 2020 (as so amended, the "*Loan Agreement*"), pursuant to which Lender made a loan to Borrower in the principal amount of \$23,500,000.00 (the "*Loan*"). Any capitalized term used, but not otherwise defined, in this Amendment has the meaning assigned to that term in the *Loan Agreement*. Guarantor has guaranteed Borrower's obligations with respect to the *Loan* pursuant to his Guaranty Agreement.

The *Loan Documents* were supplemented and amended by that certain Cash Collateral Security Agreement dated as of June 28, 2017 (the "*Cash Collateral Agreement*") and that certain Waiver and Modification Agreement dated as of June 28, 2017 (the "*Waiver Agreement*"). Borrower and Guarantor have requested that Administrative Agent and Lender amend the *Loan Agreement* in certain respects, and Administrative Agent and Lender have agreed to do so as hereinafter provided.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the agreements of Administrative Agent and Lender herein, Borrower and Guarantor represent and warrant to Administrative Agent and Lender and agree with Administrative Agent and Lender, and Administrative Agent and Lender agree with Borrower and Guarantor, as follows:

1. Effective Date. Borrower and Lender intend that this Amendment is to be effective as of October 10, 2021, regardless of the date on which any party actually executes and delivers this Amendment (the "*Effective Date*").

2. Extension of Original Maturity Date. Borrower and Lender agree that the definition of the term "Maturity Date" appearing in Section 2.14 of the *Loan Agreement* is hereby amended and restated as follows:

"*Maturity Date*" shall mean October 10, 2022.

3. Amendment to Interest Rate Provisions. From and after the Effective Date, Section 2.5 of the *Loan Agreement*, currently titled "Note Rate," is amended and restated in its entirety as follows:

2.5 Note Rate. Subject to the provisions of Section 2.6 below regarding the Default Rate, the principal amount outstanding from time to time under the Loan shall bear interest at the Prime Rate as reported from time to time in the Wall Street Journal (or if the Wall Street Journal ceases publication thereof, in such other publication as Administrative Agent shall select) plus a margin of one and three-quarter percent (1.75%), which rate will change as and when the Prime Rate changes, but in no event less than a rate of 5.00% per annum at any time (the "Note Rate").

4. Monthly Payments. A payment of accrued and unpaid interest of \$35,295.14 to November 10, 2021 (calculated after giving effect to all payments received as of November 23, 2021) shall be due upon execution of this Agreement. From and after the Effective Date, Section 2.11 of the Loan Agreement is amended and restated to read as follows:

2.11 Note Payments and Payment Dates. Commencing on December 10, 2021 and continuing on the tenth (10th) day of each successive month thereafter, provided that if the tenth (10th) day of any month is not a Business Day, such payment shall be due and payable on the immediately preceding Business Day (each being a "Payment Date"), Borrower shall pay to Administrative Agent, for further payment to Lenders consecutive monthly payments of principal and interest in the amount of \$126,633.20 plus any other amounts due under the Loan Documents.

No principal amortization payment is or shall be due on October 10, 2021 or on November 10, 2021.

5. Future Loan Payments. After giving effect to the application of principal set forth in Section 4, the outstanding principal balance following the September 10, 2021 payment is \$19,077,067.50.

6. Reaffirmation of Guaranty. Guarantor confirms that pursuant to his Guaranty Agreement Guarantor guarantees one hundred percent (100%) of the Guaranty Obligations (as defined in the Guaranty Agreement).

7. Amendment to Other Loan Documents. Borrower, Guarantor, Administrative Agent and Lender further agree that the Note and the Security Deed are hereby amended *mutatis mutandis* to reflect the extension of the Maturity Date and the other modifications to the Loan Agreement, as set forth above.

8. Modification Fee; Lender's Expenses. In consideration of Administrative Agent's and Lender's agreement to modify the Loan Documents as set forth above, Borrower agrees to pay to Administrative Agent a non-refundable modification fee (the "Modification Fee") in the amount of 0.25% of the current outstanding principal balance as of the Effective Date (\$47,693.00) on or before 4:00 p.m. eastern time on February 10, 2022, time being of the essence. In addition, concurrently herewith Borrower shall pay or reimburse Administrative Agent for the following costs and expenses incurred in relation to this Amendment:

- (a) \$3,000.00 annual fee balance;

- (b) \$4,017.00 appraisal fee;
- (c) \$1,275.00 environmental screen fee;
- (d) \$1,995.00 tax monitoring service fee; and
- (e) \$9,880.00 in legal fees and costs to Burr & Forman LLP.

The \$6,868.93 late fee (the "Late Fee") that was previously assessed is hereby conditionally waived, with such waiver becoming final provided (i) Borrower makes all principal and interest payments on a timely basis as and when due through and including February 10, 2022, and (ii) Borrower timely pays the Modification Fee on or before February 10, 2022. If Borrower fails to timely pay the Modification Fee, then the Modification Fee shall increase to \$50,078.00 and the Late Fee shall be immediately due and payable. Borrower and Administrative Agent agree that, upon the conditions of the waiver being satisfied, provided Borrower timely pays the amounts due pursuant to this Agreement, the monthly principal and interest installment payments of \$126,633.20 each through the payment date of February 10, 2022 and the Modification Fee, Borrower shall be deemed to have paid all amounts due through and including February 10, 2022 under the Loan Documents (other than the unpaid deferred Additional Interest of \$31,393.47 referenced below).

9. Reaffirmation of Loan Documents. Except as expressly stated in this Amendment, the Loan Agreement and the other Loan Documents shall be and remain in full force and effect, without modification, and Borrower and Guarantor hereby ratify and reaffirm their respective obligations under the Loan Documents, as so amended by this Amendment. Without limiting the foregoing, the unpaid deferred Additional Interest of \$31,393.47 (originally due January 2, 2018, pursuant to the Waiver Agreement) remains outstanding and shall be due upon the earlier of maturity or the prepayment in full of the Loan. This Amendment constitutes a "Loan Document" for all purposes of the Loan Documents. The execution and delivery of this Amendment is not to be interpreted or construed as, and in fact does not constitute, a novation, payment, or satisfaction of all or any portion of the Loan or any other Loan Obligations; rather, this Amendment is strictly amendatory in nature. The Loan and the other Loan Obligations continue to be secured by the Mortgage and all other documents heretofore securing the Loan, without change in nature, amount, or priority. Borrower certifies to Administrative Agent and Lender that Borrower has no defense, claim, counterclaim, or rights of setoff or recoupment of any nature whatsoever with respect to its or his obligations under the Loan Documents, as herein amended.

10. Guarantor's Consent. Guarantor consents to the execution and delivery by Borrower of this Amendment and to the consummation of the transactions described therein and acknowledges and agrees that his obligations under the Guaranty Agreement shall not be limited, altered, released, discharged, or otherwise affected in any respect on account of the execution, delivery, and performance of this Amendment or any other matter relating thereto, except to the extent that the Guaranty Agreement is expressly amended pursuant to this Amendment. Guarantor certifies to Administrative Agent and Lender that he has no defense, claim, counterclaim, or rights of setoff or recoupment of any nature whatsoever with respect to their obligations under the Guaranty Agreement, as herein amended.

11. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Georgia.

12. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

13. Headings. The headings of the paragraphs or sections of this Amendment have been included only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Amendment or be used in any manner in the interpretation of this Amendment.

14. Interpretation. Whenever the context so requires in this Amendment, all words used in the singular shall be construed to have been used in the plural (and vice versa), each gender shall be construed to include any other genders, and the word "person" shall be construed to include a natural person, a corporation, a firm, a liability company, a joint venture, a trust, an estate or any other entity.

15. Partial Invalidity. Each provision of this Amendment shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Amendment or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Amendment, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability.

16. Due Execution, Enforceability. Borrower represents and warrants to Administrative Agent and Lender that this Amendment has been duly authorized, executed and delivered pursuant to all necessary action and constitutes a valid and legally binding obligation of Borrower enforceable in accordance with its terms.

[Signatures begin on the next page]

IN WITNESS WHEREOF, Borrower and Guarantor have executed this Amendment under seal effective as of the day and year first above written.

Borrower:

**MALLARD COVE SENIOR DEVELOPMENT,
LLC**, a Missouri limited liability company

BY:

Name:

Title:

Jon A Levey
JONATHAN A. LEVEY
Managing Member

[Seal]

Guarantor:

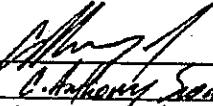
Jon A Levey
JONATHAN LEVEY

[Seal]

IN WITNESS WHEREOF, Administrative Agent and Lender have executed this Amendment under seal as of the date first set forth above.

Administrative Agent:

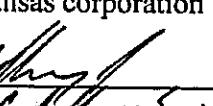
BANK OZK,
an Arkansas corporation

By: 
Name: C. Anthony Savery, Jr.
Title: Managing Director - MNC&E

[Seal]

Lender:

BANK OZK,
an Arkansas corporation

By: 
Name: C. Anthony Savery, Jr.
Title: Managing Director - MNC&E

[Seal]

IN WITNESS WHEREOF, Administrative Agent and Lender have executed this Amendment under seal as of the date first set forth above.

Administrative Agent:

BANK OZK,
an Arkansas corporation

By: *C. Anthony Suzanne, Jr.*
Name: C. Anthony Suzanne, Jr.
Title: Managing Director, Middle Market
Commercial Real Estate

[Seal]

Lender:

BANK OZK,
an Arkansas corporation

By: *C. Anthony Suzanne, Jr.*
Name: C. Anthony Suzanne, Jr.
Title: Managing Director, Middle Market Commercial
Real Estate

[Seal]

EXHIBIT A-4

AMENDMENT TO LOAN AGREEMENT

THIS AMENDMENT TO LOAN AGREEMENT (this "Amendment") dated as of December 10, 2022, is entered into by and among MALLARD COVE SENIOR DEVELOPMENT, LLC, a Missouri limited liability company ("Borrower"), JONATHAN R. LEVEY ("Guarantor"), and BANK OZK (F/K/A BANK OF THE OZARKS, successor by merger to COMMUNITY & SOUTHERN BANK), an Arkansas corporation ("Administrative Agent") and as sole Lender ("Lender").

RECITALS:

Borrower, Lender and Administrative Agent entered into that certain Loan Agreement dated as of April 6, 2015 and amended by Amendment to Loan Documents dated May 29, 2020 and Amendment to Loan Agreement dated as of October 10, 2021 (as so amended, the "Loan Agreement"), pursuant to which Lender made a loan to Borrower in the principal amount of \$23,500,000.00 (the "Loan"). Any capitalized term used, but not otherwise defined, in this Amendment has the meaning assigned to that term in the Loan Agreement. Guarantor has guaranteed Borrower's obligations with respect to the Loan pursuant to his Guaranty Agreement.

The Loan Documents were supplemented and amended by that certain Cash Collateral Security Agreement dated as of June 28, 2017 (the "Cash Collateral Agreement") and that certain Waiver and Modification Agreement dated as of June 28, 2017 (the "Waiver Agreement"). Borrower and Guarantor have requested that Administrative Agent and Lender amend the Loan Agreement in certain respects, and Administrative Agent and Lender have agreed to do so as hereinafter provided.

AGREEMENT:

NOW, THEREFORE, in consideration of the agreements of Administrative Agent and Lender herein, Borrower and Guarantor represent and warrant to Administrative Agent and Lender and agree with Administrative Agent and Lender, and Administrative Agent and Lender agree with Borrower and Guarantor, as follows:

1. Effective Date. Borrower and Lender intend that this Amendment is to be effective as of December 10, 2022, regardless of the date on which any party actually executes and delivers this Amendment (the "Effective Date").

2. Extension of Original Maturity Date. Borrower and Lender agree that the definition of the term "Maturity Date" appearing in Section 2.14 of the Loan Agreement is hereby amended and restated as follows:

"Maturity Date" shall mean December 10, 2023.

3. Amendment to Interest Rate Provisions. From and after the Effective Date, Section 2.5 of the Loan Agreement, currently titled "Note Rate," is amended and restated in its entirety as follows:

2.5 Note Rate. Subject to the provisions of Section 2.6 below regarding the Default Rate, the principal amount outstanding from time to time under the Loan shall bear interest at the Prime Rate as reported from time to time in the Wall Street Journal (or if the Wall Street Journal ceases publication thereof, in such other publication as Administrative Agent shall select) plus a margin of one and one-half percent (1.5%), which rate will change as and when the Prime Rate changes, but in no event less than a rate of 8.5% per annum at any time (the "Note Rate").

4. Monthly Payments. A payment of accrued and unpaid interest of \$152,341.84 to January 10, 2023 shall be due upon execution of this Agreement. From and after the Effective Date, Section 2.11 of the Loan Agreement is amended and restated to read as follows:

2.11 Note Payments and Payment Dates. Commencing on February 10, 2023 and continuing on the tenth (10th) day of each successive month thereafter, provided that if the tenth (10th) day of any month is not a Business Day, such payment shall be due and payable on the immediately preceding Business Day (each being a "Payment Date"), Borrower shall pay to Administrative Agent, for further payment to Lenders consecutive monthly payments of principal and interest in the amount of \$163,702.47 plus any other amounts due under the Loan Documents.

5. Future Loan Payments. The outstanding principal balance following the January 10, 2023 payment is \$18,702,236.82.

6. Reaffirmation of Guaranty. Guarantor confirms that pursuant to his Guaranty Agreement Guarantor guarantees one hundred percent (100%) of the Guaranty Obligations (as defined in the Guaranty Agreement).

7. Amendment to Other Loan Documents. Borrower, Guarantor, Administrative Agent and Lender further agree that the Note and the Security Deed are hereby amended *mutatis mutandis* to reflect the extension of the Maturity Date and the other modifications to the Loan Agreement, as set forth above.

8. Modification Fee; Lender's Expenses. In consideration of Administrative Agent's and Lender's agreement to modify the Loan Documents as set forth above, Borrower agrees to pay to Administrative Agent a non-refundable modification fee (the "Modification Fee") in the amount of 0.25% of the current outstanding principal balance as of the Effective Date (being \$46,755.00) on or before 4:00 p.m. eastern time on January 31, 2023, time being of the essence. In addition, concurrently herewith Borrower shall pay or reimburse Administrative Agent for the following costs and expenses incurred in relation to this Amendment:

- (a) \$162.00 title search fee;
- (b) \$6,415.00 appraisal fee;
- (c) \$1,500.00 transaction fee;

- (d) \$35.00 courier fee; and
- (e) \$5,850.00 in legal fees and costs to Burr & Forman LLP.

Borrower shall receive a credit for its \$10,000.00 deposit against such fees and expenses..

9. Reaffirmation of Loan Documents. Except as expressly stated in this Amendment, the Loan Agreement and the other Loan Documents shall be and remain in full force and effect, without modification, and Borrower and Guarantor hereby ratify and reaffirm their respective obligations under the Loan Documents, as so amended by this Amendment. Without limiting the foregoing, the unpaid deferred Additional Interest of \$31,393.47 (originally due January 2, 2018, pursuant to the Waiver Agreement) remains outstanding and shall be due upon the earlier of maturity or the prepayment in full of the Loan. This Amendment constitutes a "Loan Document" for all purposes of the Loan Documents. The execution and delivery of this Amendment is not to be interpreted or construed as, and in fact does not constitute, a novation, payment, or satisfaction of all or any portion of the Loan or any other Loan Obligations; rather, this Amendment is strictly amendatory in nature. The Loan and the other Loan Obligations continue to be secured by the Mortgage and all other documents heretofore securing the Loan, without change in nature, amount, or priority. Borrower certifies to Administrative Agent and Lender that Borrower has no defense, claim, counterclaim, or rights of setoff or recoupment of any nature whatsoever with respect to its or his obligations under the Loan Documents, as herein amended.

10. Guarantor's Consent. Guarantor consents to the execution and delivery by Borrower of this Amendment and to the consummation of the transactions described therein and acknowledges and agrees that his obligations under the Guaranty Agreement shall not be limited, altered, released, discharged, or otherwise affected in any respect on account of the execution, delivery, and performance of this Amendment or any other matter relating thereto, except to the extent that the Guaranty Agreement is expressly amended pursuant to this Amendment. Guarantor certifies to Administrative Agent and Lender that he has no defense, claim, counterclaim, or rights of setoff or recoupment of any nature whatsoever with respect to their obligations under the Guaranty Agreement, as herein amended.

11. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Georgia.

12. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

13. Headings. The headings of the paragraphs or sections of this Amendment have been included only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Amendment or be used in any manner in the interpretation of this Amendment.

14. Interpretation. Whenever the context so requires in this Amendment, all words used in the singular shall be construed to have been used in the plural (and vice versa), each gender shall be construed to include any other genders, and the word "person" shall be construed

to include a natural person, a corporation, a firm, a liability company, a joint venture, a trust, an estate or any other entity.

15. Partial Invalidity. Each provision of this Amendment shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Amendment or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Amendment, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability.

16. Due Execution, Enforceability. Borrower represents and warrants to Administrative Agent and Lender that this Amendment has been duly authorized, executed and delivered pursuant to all necessary action and constitutes a valid and legally binding obligation of Borrower enforceable in accordance with its terms.

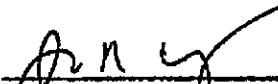
[Signatures begin on the next page]

IN WITNESS WHEREOF, Borrower and Guarantor have executed this Amendment under seal effective as of the day and year first above written.

Borrower:

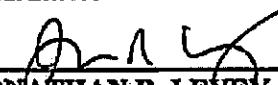
**MALLARD COVE SENIOR DEVELOPMENT,
LLC**, a Missouri limited liability company

BY:


Jonathan R. Levey
Its Manager

[Seal]

Guarantor:


JONATHAN R. LEVEY

[Seal]

IN WITNESS WHEREOF, Administrative Agent and Lender have executed this Amendment under seal as of the date first set forth above.

Administrative Agent:

BANK OZK,
an Arkansas corporation

By: _____
Name: _____
Title: _____

[Seal]

Lender:

BANK OZK,
an Arkansas corporation

By: _____
Name: _____
Title: _____

[Seal]

771492
EXHIBIT B-1

PROMISSORY NOTE

\$23,500,000 00

April 6, 2015

FOR VALUE RECEIVED, the undersigned **MALLARD COVE SENIOR DEVELOPMENT, LLC**, a Missouri limited liability company ("Borrower"), having an address at 1 McKnight Place, St Louis, Missouri 63124, Attention David A Smith, hereby promises to pay to the order of **COMMUNITY & SOUTHERN BANK**, a Georgia state banking corporation, together with its successors and assigns or, if this Note has then been endorsed "to bearer," to the bearer of this Note (collectively the "Lender"), at the office of Community & Southern Bank, as administrative agent ("Administrative Agent") for and on behalf of Lender, at 3333 Riverwood Parkway, Suite 350, Atlanta, Georgia 30339, Attention Ms Kelly Harrison, or at such other address as may be designated in writing to Borrower by Administrative Agent, the principal sum of Twenty-Three Million Five Hundred Thousand and No/100 Dollars (\$23,500,000 00), or such amount thereof as may be advanced by Lender pursuant to the terms of a certain loan agreement of even date herewith by and among Borrower, Administrative Agent and Lenders (including Lender) that are parties thereto (as so amended, the "**Loan Agreement**"), together with interest on the unpaid balance thereof at the rate or rates set forth in the Loan Agreement *Capitalized terms used herein without definition shall have the meaning given to such terms in the Loan Agreement*

THIS NOTE IS EXECUTED AND DELIVERED ON THE TERMS AND SUBJECT TO THE CONDITIONS HEREINAFTER SET FORTH

Section 1 Terms Incorporated from Loan Agreement This Note is one of the Notes referred to in, and is entitled to the benefits of, the Loan Agreement, and is payable in accordance with the terms set forth in the Loan Agreement Reference is made to the Loan Agreement for, among other things, provisions relating to the interest rate, maturity, payment, prepayment and acceleration of this Note The Note may be accelerated upon the occurrence of an Event of Default Upon any Event of Default and acceleration of the maturity of this Note, the outstanding principal balance and all accrued and unpaid interest pursuant to this Note shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrower This Note is secured by, among other things, the Mortgage referred to in the Loan Agreement, reference to which is hereby made for a description of the Mortgaged Property provided for under the Mortgage and the rights of Borrower, Administrative Agent and Lenders in respect to such Mortgaged Property All of the terms, conditions and covenants of the Loan Agreement are expressly made a part of this Note by reference in the same manner and with the same effect as if set forth herein at length, and any holder of this Note is entitled to the benefits of and remedies provided in the Loan Agreement and the other Loan Documents

Section 2 Borrower's Waiver of Certain Rights Borrower and any endorser, Guarantor or surety hereby waives the exercise of any and all exemption rights which it holds at law or in equity with respect to the debt evidenced by this Note, and of any and all rights which it holds at law or in equity to require any valuation, appraisal or marshalling, or to have or receive any presentment, protest, demand and notice of dishonor, protest, demand and

nonpayment as a condition to Administrative Agent's and Lender's exercise of any of its rights under this Note or the Loan Documents

Section 3 General

3 1 Applicable Law This Note shall be given effect and construed by application of the laws of the State of Georgia (without regard to the principles thereof governing conflicts of laws), and any action or proceeding arising hereunder, and each of Administrative Agent, Lender and Borrower submits (and waives all rights to object) to non-exclusive personal jurisdiction in the State of Georgia, for the enforcement of any and all obligations under the Loan Documents except that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it shall be brought in the United States District Court having jurisdiction in any county where any of the Land (as defined in the Loan Agreement) is located

3 2 Headings The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents

3 3 Construction As used herein, (a) the term "person" means a natural person, a trustee, a corporation, a limited liability company, a partnership and any other form of legal entity, and (b) all references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (iii) to any Section, subsection, paragraph or subparagraph shall, unless therein expressly indicated to the contrary, be deemed to have been made to such Section, subsection, paragraph or subparagraph of this Note

3 4 Severability No determination by any court, governmental body or otherwise that any provision of this Note or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision or (b) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law

3 5 Joint and Several Liability If Borrower consists of more than one person and/or entity, each such person and/or entity agrees that its liability hereunder is joint and several

3 6 Modification This Note may be modified, amended, discharged or waived only by an agreement in writing signed by the party against whom enforcement of such modification, amendment, discharge or waiver is sought

3 7 Time of the Essence Time is strictly of the essence of this Note

3 8 Successors and Assigns Bound The obligations set forth in this Note shall be binding upon Borrower and its successors and assigns

IN WITNESS WHEREOF, Borrower has duly executed and delivered this Note, or caused it to be duly executed and delivered on its behalf by its duly authorized representative, on the day and year first above written

BORROWER.

**MALLARD COVE SENIOR DEVELOPMENT,
LLC, a Missouri limited liability company**

BY



David A. Smith
Its Manager

ALLONGE

THIS ALLONGE IS TO BE ATTACHED to that certain Promissory Note dated as of April 6, 2015 made by MALLARD COVE SENIOR DEVELOPMENT, LLC to the order of COMMUNITY & SOUTHERN BANK in the original principal amount of TWENTY-THREE MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$23,500,000.00), as amended, restated and/or modified from time to time.

PAY TO THE ORDER OF: WM CAPITAL PARTNERS 90, LLC

THIS ALLONGE IS MADE WITHOUT RE COURSE AND WITHOUT REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED OR BY OPERATION OF LAW, OF ANY KIND AND NATURE WHATSOEVER, EXCEPT AS EXPRESSLY SET FORTH IN THE LOAN PURCHASE & SALE AGREEMENT DATED JUNE 6, 2023.

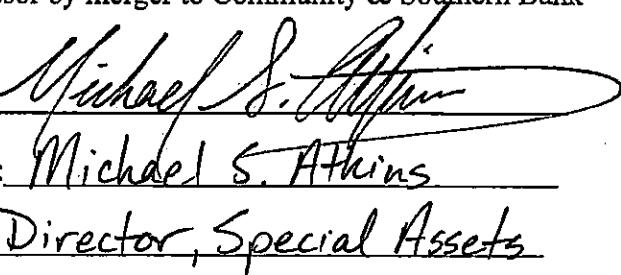
Dated as of June 23, 2023.

BANK OZK, formerly known as Bank of the Ozarks, as successor by merger to Community & Southern Bank

By:

Name:

Title:



Michael S. Atkins

Michael S. Atkins

Director, Special Assets

ORIGINAL
EXHIBIT B-2

MODIFICATION OF PROMISSORY NOTE

THIS MODIFICATION OF PROMISSORY NOTE, made and entered into as of the 16TH day of APRIL, 2021, by and between MAILLARD COVE SENIOR DEVELOPMENT, LLC, A MISSOURI LIMITED LIABILITY COMPANY (jointly and severally, the "Borrower"), and BANK OZK, FORMERLY KNOWN AS, BANK OF THE OZARKS, AS SUCCESSOR BY MERGER TO, COMMUNITY & SOUTHERN BANK (the "Lender");

W I T N E S S E T H:

WHEREAS, the Lender made a loan referred to as Loan No. 950000771492 (the "Loan") to the Borrower in the original principal amount of up to TWENTY-THREE MILLION FIVE HUNDRED THOUSAND & 00/100 Dollars (\$23,500,000.00), as evidenced by that certain Promissory Note in said amount, dated APRIL 06, 2015, made by the Borrower to the order of the Lender (the "Note"); and

WHEREAS, the current outstanding principal balance of the Loan is \$19,405,244.77 as of APRIL 16, 2021; and

WHEREAS, the Borrower and the Lender desire to modify the Note as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, the agreement of the Lender to change the terms of the Loan as set forth herein, and the sum of Ten and No/100 Dollars (\$10.00), paid in hand by each party to the other, the receipt, adequacy, and sufficiency of all of which are hereby acknowledged, the parties agree as follows:

1. **Modifications.** The Note is hereby amended as follows:

- (a) **Maturity Date.** The maturity date is changed from APRIL 10, 2021, to JULY 10, 2021, with the effect that the entire principal balance of the Note, as herein amended, together with all accrued and unpaid interest thereon, shall be due and payable on the new maturity date.
- (b) **Payment Terms.** The payment terms will continue as stated in the last Note or Modification following the effective date along with any escrow payment if applicable.
- (c) **Other.** THE EFFECTIVE DATE OF THIS MODIFICATION IS APRIL 10, 2021. THIS EXTENSION IS APPROVED TO ALLOW TIME FOR RENEWAL. INTEREST IN THE AMOUNT OF \$83,627.34 AS OF APRIL 10, 2021, A PROCESSING FEE IN THE AMOUNT OF \$15,524.20 AND A PRINCIPAL PAYMENT OF \$53,751.32 IS DUE AND PAYABLE AT THE TIME OF SIGNING.
- (d) **Automatic Payments.** If Note is currently set up with an Automatic Payment, Borrower hereby authorizes Lender to continue the Automatic Payment until the Maturity Date of the Note. If the funds in the account are insufficient to cover any payment, Lender shall not be obligated to advance funds to cover the payment. At any time for any reason, Borrower or Lender may voluntarily terminate Automatic Payments.

2. **Replacement of Note.** Upon the loss, theft, destruction or mutilation of the original Note, Borrower will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any collateral documents to the Note shall be deemed to refer to such replacement Note. Further, Borrower acknowledges and agrees that Lender is authorized to maintain, store and otherwise retain the Loan documents or any of them in their original, inscribed tangible form or a record thereof in an electronic medium or other non-tangible medium which permits such record to be retrieved in a perceivable form; that a record of any of the Loan documents in a non-tangible medium which is retrievable in a perceivable form shall be the agreement of Borrower to the same extent as if such loan document was in its original, inscribed tangible medium and such a record shall be binding on and enforceable against Borrower.

3. **Default Rate.** Upon the occurrence of any default or after maturity or after judgment has been rendered on any obligation under this Note, all amounts outstanding under this Note, including any interest, fees, or costs which are not paid when due, will at the option of the Lender bear interest at the lesser of: (a) a rate which is 16.00%; or (b) the maximum amount or rate of interest allowed by applicable law. In no event shall the amount or rate of interest due and payable under the Note exceed the maximum amount or rate of interest allowed by applicable law and, in the event any such excess payment is made by the Borrower or received by the Lender, such excess sum shall be credited as a payment of principal (or if no principal shall remain outstanding, shall be refunded to the Borrower). It is the express intent hereof that the Borrower not pay and the Lender not receive, directly or indirectly, interest in excess of that which may be lawfully paid under applicable law including the usury laws in force in the State of GEORGIA. This may result in compounding of interest. This will not constitute a waiver of any default.

4. **General Terms.** The Note, as herein modified, remains in full force and effect in accordance with its terms, and the undersigned hereby ratify and confirm the same. The undersigned acknowledge that they are fully obligated under the terms of the Note and other documents relating to or securing the Loan (the "Loan Documents") and that they have no offsets, claims, counterclaims, or defenses with respect to the obligations under the Loan Documents, as amended hereby, or any facts, events, transactions, omissions, or agreements relating thereto. The

undersigned hereby waive and release any such offsets, claims, counterclaims, and defenses. This Modification of Promissory Note shall not be construed in any way to rescind, cancel, satisfy or novate the indebtedness under the Note and other Loan Documents. The undersigned hereby agree that nothing herein shall constitute a waiver by Lender of any default, whether known or unknown, which may exist under the Note or other Loan Documents. The undersigned hereby further agree that no action, inaction or agreement by Lender, including, without limitation, any extension, indulgence, waiver, consent or agreement of modification which may have occurred or have been granted or entered into (or which may be occurring or be granted or entered into hereunder or otherwise) with respect to nonpayment of the Loan or any portion thereof, or with respect to matters involving security for the Loan, or with respect to any other matter relating to the Loan, shall require or imply any future extension, indulgence, waiver, consent or agreement by Lender. The undersigned hereby acknowledge and agree that Lender has made no agreement, and is in no way obligated, to grant any future extension, indulgence, waiver or consent with respect to the Loan or any matter relating to the Loan. The undersigned further acknowledge and agree that this Modification of Promissory Note shall in no way occasion a release of any collateral held by Lender as security to or for the Loan, and that all collateral held by Lender as security to or for the Loan shall continue to secure the Loan. This Modification of Promissory Note shall be binding upon and inure to the benefit of the undersigned and Lender and their respective successors and assigns, whether voluntary by act of the parties or involuntary by operation of law. This Modification of Promissory Note shall be governed by, and construed in accordance with, the laws of the State of GEORGIA. The undersigned warrant that the undersigned have full authority to execute this Modification of Promissory Note.

BORROWER(S):

[If Borrower is an Individual]

Name:

Name:

Name:

Name:

[If Borrower is an Entity]

MALLARD COVE SENIOR
DEVELOPMENT, LLC, A MISSOURI
LIMITED LIABILITY COMPANY

Name: JONATHAN R LEVEY
Title: MANAGING MEMBER

Name:
Title:

Name:
Title:

BANK OZK, FORMERLY KNOWN AS, BANK
OF THE OZARKS, AS SUCCESSOR BY
MERGER TO, COMMUNITY & SOUTHERN
BANK

Authorized
Signer

CONSENT OF GUARANTORS

The undersigned guarantors under the terms of certain Commercial Guaranty agreements (as amended from time to time; the "Guaranty") in favor of BANK OZK, FORMERLY KNOWN AS, BANK OF THE OZARKS, AS SUCCESSOR BY MERGER TO, COMMUNITY & SOUTHERN BANK (the "Lender"), hereby acknowledge and consent to the within and foregoing Modification of Promissory Note (the "Note Modification") and confirm that the Guaranty remains in full force and effect as to all liabilities and obligations of MALLARD COVE SENIOR DEVELOPMENT, LLC, A MISSOURI LIMITED LIABILITY COMPANY ("Borrower") to the Lender therein guaranteed, including, without limitation, the liabilities and obligations under the Note, as modified in the Note Modification. The undersigned acknowledge and agree that they have no offsets, claims, counterclaims, or defenses with respect to the obligations under the Note, as modified in the Note Modification, or the obligations under the Guaranty, and to the extent that they have any offsets, claims, counterclaims, or defenses with respect to the obligations under the Note, as modified in the Note Modification, or Guaranty, or any facts, events, transactions, omissions, or agreements relating thereto, the undersigned, jointly and severally, hereby waive and release such offsets, claims, counterclaims, and defenses.

Although each of the undersigned has been informed of the terms of the Note Modification, each understands and agrees that the Bank has no duty to so notify it or any other guarantor or to seek this or any future acknowledgment, consent or reaffirmation, and nothing contained herein shall create or imply any such duty as to any transactions, past or future.

IN WITNESS WHEREOF, the undersigned guarantors have executed this Consent of Guarantors as of this 10th day of May, 2021.

GUARANTOR(S):

[If Guarantor is an Individual]

Name: JONATHAN LIVELY

Name: _____

Name: _____

Name: _____

[If Guarantor is an Entity]

Name: _____
Title: _____

Name: _____
Title: _____

Name: _____
Title: _____

Name: _____
Title: _____

ORIGINAL

EXHIBIT B-3

MODIFICATION OF PROMISSORY NOTE

THIS MODIFICATION OF PROMISSORY NOTE, made and entered into as of the 18TH day of AUGUST, 2021, by and between MAILLARD COVE SENIOR DEVELOPMENT, LLC, A MISSOURI LIMITED LIABILITY COMPANY (jointly and severally, the "Borrower"), and BANK OZK, FORMERLY KNOWN AS, BANK OF THE OZARKS, AS SUCCESSOR BY MERGER TO, COMMUNITY & SOUTHERN BANK (the "Lender");

WITNESSETH:

WHEREAS, the Lender made a loan referred to as Loan No. 950000771492 (the "Loan") to the Borrower in the original principal amount of up to TWENTY-THREE MILLION FIVE HUNDRED THOUSAND & 00/100 Dollars (\$23,500,000.00), as evidenced by that certain Promissory Note in said amount, dated APRIL 06, 2015, made by the Borrower to the order of the Lender (the "Note"); and

WHEREAS, the current outstanding principal balance of the Loan is \$19,240,752.84 as of AUGUST 18, 2021; and

WHEREAS, the Borrower and the Lender desire to modify the Note as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, the agreement of the Lender to change the terms of the Loan as set forth herein, and the sum of Ten and No/100 Dollars (\$10.00), paid in hand by each party to the other, the receipt, adequacy, and sufficiency of all of which are hereby acknowledged, the parties agree as follows:

1. Modifications. The Note is hereby amended as follows:

(a) Maturity Date. The maturity date is changed from JULY 10, 2021, to OCTOBER 10, 2021, with the effect that the entire principal balance of the Note, as herein amended, together with all accrued and unpaid interest thereon, shall be due and payable on the new maturity date.

(b) Payment Terms. The payment terms will continue as stated in the last Note or Modification following the effective date along with any escrow payment if applicable.

(c) Other. THE EFFECTIVE DATE OF THIS MODIFICATION IS JULY 10, 2021. THIS EXTENSION IS APPROVED TO ALLOW TIME FOR RENEWAL INTEREST IN THE AMOUNT OF \$80,230.04 AS OF JULY 10, 2021. A PROCESSING FEE IN THE AMOUNT OF \$12,026.00 AND A PRINCIPAL PAYMENT OF \$54,536.53 ARE DUE AND PAYABLE AT THE TIME OF SIGNING.

(d) Automatic Payments. If Note is currently set up with an Automatic Payment, Borrower hereby authorizes Lender to continue the Automatic Payment until the Maturity Date of the Note. If the funds in the account are insufficient to cover any payment, Lender shall not be obligated to advance funds to cover the payment. At any time for any reason, Borrower or Lender may voluntarily terminate Automatic Payments.

2. Replacement of Note. Upon the loss, theft, destruction or mutilation of the original Note, Borrower will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any collateral documents to the Note shall be deemed to refer to such replacement Note. Further, Borrower acknowledges and agrees that Lender is authorized to maintain, store and otherwise retain the Loan documents or any of them in their original, inscribed tangible form or a record thereof in an electronic medium or other non-tangible medium which permits such record to be reviewed in a perceivable form; that a record of any of the Loan documents in a non-tangible medium which is retrievable in a perceivable form shall be the agreement of Borrower to the same extent as if such loan document was in its original, inscribed tangible medium and such a record shall be binding on and enforceable against Borrower.

3. Default Rate. Upon the occurrence of any default or after maturity or after judgment has been rendered on any obligation under this Note, all amounts outstanding under this Note, including any interest, fees, or costs which are not paid when due, will at the option of the Lender bear interest at the lesser of: (a) a rate which is 16.00%; or (b) the maximum amount or rate of interest allowed by applicable law. In no event shall the amount or rate of interest due and payable under the Note exceed the maximum amount or rate of interest allowed by applicable law and, in the event any such excess payment is made by the Borrower or received by the Lender, such excess sum shall be credited as a payment of principal (or if no principal shall remain outstanding, shall be refunded to the Borrower). It is the express intent hereof that the Borrower not pay and the Lender not receive, directly or indirectly, interest in excess of that which may be lawfully paid under applicable law including the usury laws in force in the State of GEORGIA. This may result in compounding of interest. This will not constitute a waiver of any default.

4. General Terms. The Note, as herein modified, remains in full force and effect in accordance with its terms, and the undersigned hereby ratify and confirm the same. The undersigned acknowledge that they are fully obligated under the terms of the Note and other documents relating to or securing the Loan (the "Loan Documents") and that they have no offsets, claims, counterclaims, or defenses with respect to the obligations under the Loan Documents, as amended hereby, or any facts, events, transactions, omissions, or agreements relating thereto. The

undersigned hereby waive and release any such offsets, claims, counterclaims, and defenses. This Modification of Promissory Note shall not be construed in any way to rescind, cancel, satisfy or novate the indebtedness under the Note and other Loan Documents. The undersigned hereby agree that nothing herein shall constitute a waiver by Lender of any default, whether known or unknown, which may exist under the Note or other Loan Documents. The undersigned hereby further agree that no action, inaction or agreement by Lender, including, without limitation, any extension, indulgence, waiver, consent or agreement of modification which may have occurred or have been granted or entered into (or which may be occurring or be granted or entered into hereunder or otherwise) with respect to nonpayment of the Loan or any portion thereof, or with respect to matters involving security for the Loan, or with respect to any other matter relating to the Loan, shall require or imply any future extension, indulgence, waiver, consent or agreement by Lender. The undersigned hereby acknowledge and agree that Lender has made no agreement, and is in no way obligated, to grant any future extension, indulgence, waiver or consent with respect to the Loan or any matter relating to the Loan. The undersigned further acknowledge and agree that this Modification of Promissory Note shall in no way occasion a release of any collateral held by Lender as security to or for the Loan, and that all collateral held by Lender as security to or for the Loan shall continue to secure the Loan. This Modification of Promissory Note shall be binding upon and inure to the benefit of the undersigned and Lender and their respective successors and assigns, whether voluntary by act of the parties or involuntary by operation of law. This Modification of Promissory Note shall be governed by, and construed in accordance with, the laws of the State of GEORGIA. The undersigned warrant that the undersigned have full authority to execute this Modification of Promissory Note.

BORROWER(S):

[If Borrower is an Individual]

Name: _____

Name: _____

Name: _____

Name: _____

[If Borrower is an Entity]

MALLARD COVE SENIOR
DEVELOPMENT, LLC, A MISSOURI
LIMITED LIABILITY COMPANY

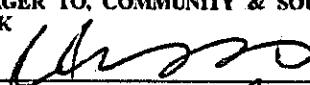
Name: JONATHAN R. LIVEY
Title: MANAGING MEMBER

Name: _____
Title: _____

Name: _____
Title: _____

BANK OZK, FORMERLY KNOWN AS, BANK
OF THE OZARKS, AS SUCCESSOR BY
MERGER TO, COMMUNITY & SOUTHERN
BANK

Authorized
Signer


*Ricardo Rodriguez
Director*

CONSENT OF GUARANTORS

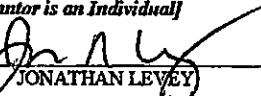
The undersigned guarantors under the terms of certain Commercial Guaranty agreements (as amended from time to time, the "Guaranty") in favor of **BANK OZK, FORMERLY KNOWN AS, BANK OF THE OZARKS, AS SUCCESSOR BY MERGER TO, COMMUNITY & SOUTHERN BANK** (the "Lender"), hereby acknowledge and consent to the within and foregoing Modification of Promissory Note (the "Note Modification") and confirm that the Guaranty remains in full force and effect as to all liabilities and obligations of **MALLARD COVE SENIOR DEVELOPMENT, LLC, A MISSOURI LIMITED LIABILITY COMPANY** ("Borrower") to the Lender therein guaranteed, including, without limitation, the liabilities and obligations under the Note, as modified in the Note Modification. The undersigned acknowledge and agree that they have no offsets, claims, counterclaims, or defenses with respect to the obligations under the Note, as modified in the Note Modification, or the obligations under the Guaranty, and to the extent that they have any offsets, claims, counterclaims, or defenses with respect to the obligations under the Note, as modified in the Note Modification, or Guaranty, or any facts, events, transactions, omissions, or agreements relating thereto, the undersigned, jointly and severally, hereby waive and release such offsets, claims, counterclaims, and defenses.

Although each of the undersigned has been informed of the terms of the Note Modification, each understands and agrees that the Bank has no duty to so notify it or any other guarantor or to seek this or any future acknowledgment, consent or reaffirmation, and nothing contained herein shall create or imply any such duty as to any transactions, past or future.

IN WITNESS WHEREOF, the undersigned guarantors have executed this Consent of Guarantors as of this 31 day of May, 2021.

GUARANTOR(S):

[If Guarantor is an Individual]

Name: 

Name: _____

Name: _____

Name: _____

[If Guarantor is an Entity]

Name:
Title: _____

Name:
Title: _____

Name:
Title: _____

Name:
Title: _____

EXHIBIT B-4

MODIFICATION OF PROMISSORY NOTE

THIS MODIFICATION OF PROMISSORY NOTE, made and entered into as of the 16TH day of NOVEMBER, 2022, by and between MALLARD COVE SENIOR DEVELOPMENT, LLC, A MISSOURI LIMITED LIABILITY COMPANY (jointly and severally, the "Borrower"), and BANK OZK, FORMERLY KNOWN AS, BANK OF THE OZARKS, AS SUCCESSOR BY MERGER TO, COMMUNITY & SOUTHERN BANK (the "Lender");

WITNESSETH:

WHEREAS, the Lender made a loan referred to as Loan No. 950000771492 (the "Loan") to the Borrower in the original principal amount of up to TWENTY-THREE MILLION FIVE HUNDRED THOUSAND & 00/100 Dollars (\$23,500,000.00), as evidenced by that certain Promissory Note in said amount, dated APRIL 06, 2015, made by the Borrower to the order of the Lender (the "Note"); and

WHEREAS, the current outstanding principal balance of the Loan is \$18,702,236.82 as of NOVEMBER 16, 2022; and

WHEREAS, the Borrower and the Lender desire to modify the Note as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, the agreement of the Lender to change the terms of the Loan as set forth herein, and the sum of Ten and No/100 Dollars (\$10.00), paid in hand by each party to the other, the receipt, adequacy, and sufficiency of all of which are hereby acknowledged, the parties agree as follows:

1. Modifications. The Note is hereby amended as follows:

- (a) Maturity Date. The maturity date is changed from OCTOBER 10, 2022, to DECEMBER 10, 2022, with the effect that the entire principal balance of the Note, as herein amended, together with all accrued and unpaid interest thereon, shall be due and payable on the new maturity date.
- (b) Payment Terms. The payment terms will continue as stated in the last Note or Modification following the effective date along with any escrow payment if applicable.
- (c) Other. THE EFFECTIVE DATE OF THIS MODIFICATION IS NOVEMBER 10, 2022. THIS EXTENSION IS APPROVED TO ALLOW TIME FOR RENEWAL. INTEREST IN THE AMOUNT OF \$130,024.54 AS OF NOVEMBER 10, 2022, A FEE BALANCE OF \$2,899.80, AND A PROCESSING FEE IN THE AMOUNT OF \$13,091.57 IS DUE AND PAYABLE AT THE TIME OF SIGNING.
- (d) Automatic Payments. If Note is currently set up with an Automatic Payment, Borrower hereby authorizes Lender to continue the Automatic Payment until the Maturity Date of the Note. If the funds in the account are insufficient to cover any payment, Lender shall not be obligated to advance funds to cover the payment. At any time for any reason, Borrower or Lender may voluntarily terminate Automatic Payments.

2. Replacement of Note. Upon the loss, theft, destruction or mutilation of the original Note, Borrower will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any collateral documents to the Note shall be deemed to refer to such replacement Note. Further, Borrower acknowledges and agrees that Lender is authorized to maintain, store and otherwise retain the Loan documents or any of them in their original, inscribed tangible form or a record thereof in an electronic medium or other non-tangible medium which permits such record to be retrieved in a perceivable form; that a record of any of the Loan documents in a non-tangible medium which is retrievable in a perceivable form shall be the agreement of Borrower to the same extent as if such loan document was in its original, inscribed tangible medium and such a record shall be binding on and enforceable against Borrower.

3. Default Rate. Upon the occurrence of any default or after maturity or after judgment has been rendered on any obligation under this Note, all amounts outstanding under this Note, including any interest, fees, or costs which are not paid when due, will at the option of the Lender bear interest at the lesser of: (a) a rate which is 16.00%; or (b) the maximum amount or rate of interest allowed by applicable law. In no event shall the amount or rate of interest due and payable under the Note exceed the maximum amount or rate of interest allowed by applicable law and, in the event any such excess payment is made by the Borrower or received by the Lender, such excess sum shall be credited as a payment of principal (or if no principal shall remain outstanding, shall be refunded to the Borrower). It is the express intent hereof that the Borrower not pay and the Lender not receive, directly or indirectly, interest in excess of that which may be lawfully paid under applicable law including the usury laws in force in the State of GEORGIA. This will not constitute a waiver of any default.

4. General Terms. The Note, as herein modified, remains in full force and effect in accordance with its terms, and the undersigned hereby ratify and confirm the same. The undersigned acknowledge that they are fully obligated under the terms of the Note and other documents relating to or securing the Loan (the "Loan Documents") and that they have no offsets, claims, counterclaims, or defenses with respect to the obligations under the Loan

Documents, as amended hereby, or any facts, events, transactions, omissions, or agreements relating thereto. The undersigned hereby waive and release any such offsets, claims, counterclaims, and defenses. This Modification of Promissory Note shall not be construed in any way to rescind, cancel, satisfy or novate the indebtedness under the Note and other Loan Documents. The undersigned hereby agree that nothing herein shall constitute a waiver by Lender of any default, whether known or unknown, which may exist under the Note or other Loan Documents. The undersigned hereby further agree that no action, inaction or agreement by Lender, including, without limitation, any extension, indulgence, waiver, consent or agreement of modification which may have occurred or have been granted or entered into (or which may be occurring or be granted or entered into hereunder or otherwise) with respect to nonpayment of the Loan or any portion thereof, or with respect to matters involving security for the Loan, or with respect to any other matter relating to the Loan, shall require or imply any future extension, indulgence, waiver, consent or agreement by Lender. The undersigned hereby acknowledge and agree that Lender has made no agreement, and is in no way obligated, to grant any future extension, indulgence, waiver or consent with respect to the Loan or any matter relating to the Loan. The undersigned further acknowledge and agree that this Modification of Promissory Note shall in no way occasion a release of any collateral held by Lender as security to or for the Loan, and that all collateral held by Lender as security to or for the Loan shall continue to secure the Loan. This Modification of Promissory Note shall be binding upon and inure to the benefit of the undersigned and Lender and their respective successors and assigns, whether voluntary by act of the parties or involuntary by operation of law. This Modification of Promissory Note shall be governed by, and construed in accordance with, the laws of the State of GEORGIA. The undersigned warrant that the undersigned have full authority to execute this Modification of Promissory Note.

BORROWER(S):

[If Borrower is an Individual]

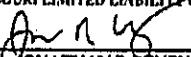
Name: _____

Name: _____

Name: _____

Name: _____

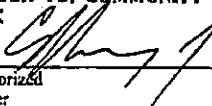
[If Borrower is an Entity]

MALLARD COVE SENIOR DEVELOPMENT, LLC,
A MISSOURI LIMITED LIABILITY COMPANY


Name: JONATHAN R LEVEY
Title: MANAGING MEMBER

Name: _____
Title: _____

Name: _____
Title: _____

BANK OZK, FORMERLY KNOWN AS, BANK
OF THE OZARKS, AS SUCCESSOR BY
MERGER TO, COMMUNITY & SOUTHERN
BANK


Authorized
Signer

CONSENT OF GUARANTORS

The undersigned guarantors under the terms of certain Commercial Guaranty agreements (as amended from time to time, the "Guaranty") in favor of BANK OZK, FORMERLY KNOWN AS, BANK OF THE OZARKS, AS SUCCESSOR BY MERGER TO, COMMUNITY & SOUTHERN BANK (the "Lender"), hereby acknowledge and consent to the within and foregoing Modification of Promissory Note (the "Note Modification") and confirm that the Guaranty remains in full force and effect as to all liabilities and obligations of MALLARD COVE SENIOR DEVELOPMENT, LLC, A MISSOURI LIMITED LIABILITY COMPANY ("Borrower") to the Lender therein guaranteed, including, without limitation, the liabilities and obligations under the Note, as modified in the Note Modification. The undersigned acknowledge and agree that they have no offsets, claims, counterclaims, or defenses with respect to the obligations under the Note, as modified in the Note Modification, or the obligations under the Guaranty, and to the extent that they have any offsets, claims, counterclaims, or defenses with respect to the obligations under the Note, as modified in the Note Modification, or Guaranty, or any facts, events, transactions, omissions, or agreements relating thereto, the undersigned, jointly and severally, hereby waive and release such offsets, claims, counterclaims, and defenses.

Although each of the undersigned has been informed of the terms of the Note Modification, each understands and agrees that the Bank has no duty to so notify it or any other guarantor or to seek this or any future acknowledgment, consent or reaffirmation, and nothing contained herein shall create or imply any such duty as to any transactions, past or future.

IN WITNESS WHEREOF, the undersigned guarantors have executed this Consent of Guarantors as of this
30th day of March, 2012.

GUARANTOR(S):

[If Guarantor is an Individual]

Name: JONATHAN LEVEY

Name:

Name:

Name:

[If Guarantor is an Entity]

Name:
Title:

Name:
Title:

Name:
Title:

Name:
Title:

EXHIBIT C-1

Wayne Coates
Hamilton County Recorders Office
Doc #: 15-0135119 Type: RT
Filed: 04/09/15 10:12 11 AM \$276.00
Off Rec 12365 01250 F WC7 33 214

b128&501250FB

3429492

OPEN-END MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING

THIS OPEN-END MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument"), is made as of the 6 day of April, 2015, by and between **MALLARD COVE SENIOR DEVELOPMENT, LLC**, a Missouri limited liability company, as mortgagor (together with its successors and assigns "Borrower"), whose address is 1 McKnight Place, St Louis, Missouri 63124, Attention David A Smith, in favor of **COMMUNITY & SOUTHERN BANK**, a Georgia state banking corporation, as administrative agent and mortgagee (together with its successors and assigns as mortgagee, "Administrative Agent"), whose address is 3333 Riverwood Parkway, Suite 350, Atlanta, Georgia 30339, Attention Kelly Harrison

RECITALS

A Borrower has entered into a Loan Agreement (hereinafter defined) with Administrative Agent and the Lenders (as defined therein) from time to time parties thereto, and pursuant to such Loan Agreement has agreed to borrow from Lenders the principal sum of Twenty-Three Million Five Hundred Thousand and No/100 Dollars (\$23,500,000.00) which is evidenced by one or more Promissory Notes of even date herewith from Borrower in such aggregate principal amount, maturing not later than April 10, 2020. Such loan or loans to Borrower made pursuant to a Loan Agreement are referred to collectively as the "Loan." The Promissory Notes evidencing the Loan to Borrower, including all schedules, riders, allonges, endorsements, addenda or amendments, and together with any renewals, replacements, substitutions or extensions thereof, are collectively referred to as the "Note."

B As a condition precedent to making the Loan, Administrative Agent and Lenders have required that Borrower execute this Security Instrument as security for the Loan and the other Loan Obligations (as hereinafter defined)

GRANTING CLAUSES

NOW, THEREFORE, for and in consideration of the Loan Obligations, and to secure the prompt payment thereof and to secure prompt and full performance of all other monetary and non-monetary obligations under the Loan Documents, Borrower does hereby irrevocably **GRANT, BARGAIN, SELL, CONVEY, ALIEN, REMISE, RELEASE, ASSIGN,**

**TRANSFER, MORTGAGE, HYPOTHECATE, PLEDGE, DELIVER, SET OVER,
WARRANT AND CONFIRM** unto Administrative Agent, its successors and assigns forever, for its benefit and the benefit of Lenders, and grants to Administrative Agent, for its benefit and the benefit of Lenders, a security interest in and to the Mortgaged Property (as hereinafter defined)

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

PROVIDED, HOWEVER, that if Borrower shall pay in full to Administrative Agent and Lenders the Loan Obligations, 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, and Borrower shall cause all other obligated parties to, keep, perform, and observe 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, then this Security 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 Borrower and Administrative Agent covenant and agree as follows

1 **Definitions.** The following terms, when used in this Security 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 14

(b) **“Accounts”** has the meaning given such term in the UCC, and includes, without limitation, any rights of Borrower arising from the operation of the Facility or other parts of the Mortgaged Property 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 or other Mortgaged Property (ii) all moneys and accounts, if any, held by Administrative Agent or any Lender pursuant to this Security Instrument or any other Loan Document, (iii) all rights to payment from state or federal programs, boards, bureaus or agencies, and rights to payment from residents, private insurers, and others arising from the operation of the Facility, including rights to payment pursuant to Reimbursement Contracts, (iv) receivables arising out of the use of a credit or charge card or information contained on or for use with the card, (v) any and all “health-care insurance receivables” (as defined in the UCC), (vi) Supporting Obligations, letter-of-credit rights and letters of credit given by any Person with respect to any of the foregoing, and (vii) all books and records in whatever media (paper, electronic or otherwise) recorded or stored, with respect to any or all of the foregoing and all equipment and general

intangibles necessary or beneficial to retain, access and/or process the information contained in those books and records. Accounts shall include the Proceeds thereof.

(c) "**Administrative Agent**" means the entity identified as "Administrative Agent" in the first paragraph of this Security Instrument

(d) "**Affiliate**" means, with respect to any Person, (i) each Person that controls, is controlled by or is under common control with such Person, (ii) 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 (iii) each of such Person's officers, directors, members, joint venturers and partners

(e) "**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 emblems 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

(f) "**Assignment of Leases and Rents**" means that certain Assignment of Leases and Rents of even date herewith executed by Borrower to Administrative Agent for the benefit of Administrative Agent and Lenders, together with all amendments and supplements thereto

(g) "**Assignment of Licenses**" means that certain Assignment of Licenses, Permits and Contracts of even date herewith executed by Borrower to Administrative Agent for the benefit of Administrative Agent and Lenders, together with all amendments and supplements thereto

(h) "**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U S C §§ 101 et seq., as amended, and any successor or replacement legislation relating to relief of debtors

(i) "**Borrower**" means Mallard Cove Senior Development, LLC, a Missouri limited liability company

(j) "**Business Day**" means a day, other than Saturday, Sunday or legal holidays, when Administrative Agent is open for business

(k) "**Chattel Paper**" has the meaning given such term in the UCC, and includes, without limitation, a record or records (including, without limitation, electronic chattel paper) which evidence both a monetary obligation and a security interest in specific goods, a

security interest in specific goods and software used in the goods, or a lease of specific goods, all Supporting Obligations with respect thereto, any returned, rejected or repossessed goods and software covered by any such record or records and all proceeds (in any form including, without limitation, accounts, contract rights, documents, chattel paper, instruments and general intangibles) of such returned, rejected or repossessed goods, and all proceeds (cash proceeds and noncash proceeds) of the foregoing

- (l) **“Condemnation”** has the meaning given to that term in Section 11
- (m) **“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 Borrower 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 resident or other Person seeking services from Borrower pursuant to which Borrower provides or furnishes assisted living or other 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 Borrower and any resident of the Facility giving the resident certain rights of occupancy in the Facility and providing for certain services to such resident
- (n) **“Default Rate”** has the meaning given to that term in the Loan Agreement
- (o) **“Deposit Accounts”** has the meaning given such term in the UCC
- (p) **“Equipment”** has the meaning given such term in the UCC, and includes, without limitation, all beds, linen, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, rehabilitation equipment, restaurant and kitchen equipment, and other fixtures and equipment of Borrower (including, without limitation, embedded software) located on, attached to or used or useful in connection with any of 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 or other Mortgaged Property and not owned by Borrower, the Equipment shall include the leasehold interest only of Borrower together with any options to purchase any of said items and any additional or greater rights with respect to such items which Borrower 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
- (q) **“Event of Default”** means the occurrence of any event listed in Section 13

(r) "**Facility**" means the senior housing facility consisting of an assisted living facility and memory care facility, located on the Land, as any of the same may from time to time exist, together with any other general or specialized care facilities, if any, now or hereafter operated on the Land

(s) "**Fixtures**" means all property 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

(t) "**General Intangibles**" has the meaning given such term in the UCC, and includes, without limitation, all intangible personal property of Borrower 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, commercial tort claims, other claims (including without limitation all claims for income tax and other refunds), payment intangibles and Supporting Obligations

(u) "**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 Mortgaged Property and/or the Improvements or the use, operation or improvement of the Mortgaged Property

(v) "**Guarantor**" means Jonathan Levey, an individual

(w) "**Guaranty Agreement**" means that certain Payment and Performance Guaranty Agreement of even date herewith executed by Guarantor to Administrative Agent for the benefit of Administrative Agent and Lenders, in each case together with all amendments and supplements thereto

(x) "**Impositions**" means (i) water and sewer charges which may be levied on all or any part of the Mortgaged Property, (ii) the premiums for fire and other hazard insurance, business interruption insurance and such other insurance as Administrative Agent may require under the Loan Agreement, (iii) the Taxes, and (iv) amounts for other charges and expenses

which Administrative Agent 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 Administrative Agent's and Lenders' interest, all as reasonably estimated from time to time by Administrative Agent

(y) **"Improvements"** means all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including but not limited to, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatuses which are or shall be attached to the Land or said buildings, structures or improvements

(z) **"Instruments"** has the meaning given such term in the UCC, and includes, without limitation, all instruments, Chattel Paper, documents or other writings obtained by Borrower from or in connection with the construction and operation of the Mortgaged Property or the operation of the Facility (including without limitation, all ledger sheets, computer records and printouts, data bases, programs, books of account, software, trademarks or trade names, utility contracts, maintenance and service contracts and files of Borrower relating thereto)

(aa) **"Inventory"** means all inventories of food, beverages and other comestibles owned and held by Borrower 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 Borrower (including, without limitation, embedded software) for sale to or for consumption by residents or guests of the Mortgaged Property or the Facility and all such other goods returned to or repossessed by Borrower

(bb) **"Investment Property"** has the meaning given such term in the UCC, and includes, without limitation, a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account, and all proceeds (cash proceeds and noncash proceeds) of, and Supporting Obligations with respect to, the foregoing

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

(dd) **"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

(ee) **"Lenders"** means each Lender from time to time pursuant to, and as defined in, the Loan Agreement

(ff) **“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 Security Instrument, the Loan Agreement and the other Loan Documents

(gg) **“Loan”** has the meaning given to that term in the Recitals

(hh) **“Loan Agreement”** means that certain Loan Agreement of even date herewith by and between Borrower, Administrative Agent and Lenders, together with all amendments and supplements thereto

(ii) **“Loan Documents”** shall have the meaning given such term in the Loan Agreement

(jj) **“Loan Obligations”** means the aggregate of all principal and interest owing from time to time under the Note and all indebtedness, expenses, charges and other amounts from time to time owing under the Note, the Loan Agreement, this Security Instrument or the other Loan Documents and all covenants, agreements and other obligations from time to time owing to, or for the benefit of, Administrative Agent or any Lender pursuant to the Loan Documents

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

(ll) **“Money”** means all monies, cash, rights to Deposit Accounts, or other items of legal tender obtained from or for use in connection with the operation of the Mortgaged Property or the Facility

(mm) **“Mortgaged Property”** means all of Borrower's present and future right, title and interest in and to all of the following, provided that if any of the following capitalized terms are defined in the UCC, each such term shall have the meaning given such term in the UCC and shall include, without limitation, the additional items set forth in this Security Instrument with respect to such term

- (i) The Land,
- (ii) all Appurtenant Rights,
- (iii) all Equipment,
- (iv) all Improvements,

- (v) all Fixtures,
 - (vi) all Accounts,
 - (vii) all Deposit Accounts,
 - (viii) all Contracts,
 - (ix) all General Intangibles,
 - (x) all Permits (to the extent assignable),
 - (xi) all Money,
 - (xii) all Instruments,
 - (xiii) all Inventory,
 - (xiv) all Reimbursement Contracts,
 - (xv) all Rents,
 - (xvi) all Personality,
 - (xvii) all Leases,
 - (xviii) all Chattel Paper,
 - (xix) all Supporting Obligations,
 - (xx) all Investment Property,
 - (xxi) all Proceeds,
- (xxii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personality or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations,
- (xxiii) 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 Security Instrument is dated),

(xxiv) 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

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

(nn) "Note" has the meaning given to that term in the recitals

(oo) "Notice" has the meaning given to that term in Section 23

(pp) "O&M Programs" has the meaning given to such term in the Loan Agreement

(qq) "Permits" means all licenses, permits and certificates used or necessary in connection with the construction, ownership, operation, use or occupancy of the Mortgaged Property and/or the Facility, including, without limitation, site work permits, building permits, business licenses, state health department licenses, food service licenses, licenses to conduct business, assisted living facility licenses, certificates of need and all such other permits, licenses and rights, obtained from any governmental, quasi-governmental or private person or entity whatsoever concerning ownership, operation, use or occupancy

(rr) "Permitted Encumbrances" has the meaning given to that term in the Loan Agreement

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

(tt) "Personalty" means all Equipment, Inventory, General Intangibles 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, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) 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 and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental Permits relating to any activities on the Land

(uu) "Prior Lien" has the meaning given to that term in Section 25

(vv) "**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 immovable, 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

(ww) "**Property Jurisdiction**" means the jurisdiction in which the Mortgaged Property is located

(xx) "**Reimbursement Contracts**" means all third-party reimbursement contracts for the Facility which are now or hereafter in effect with respect to residents qualifying for coverage under the same, including federal or state reimbursement programs, 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

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

(zz) "**Single-Purpose Entity**" means a Person which owns no interest or property other than the Mortgaged Property or interests in Borrower

(aaa) "**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)

(bbb) "**Supporting Obligation**" has the meaning given such term in the UCC, and includes, without limitation, a letter-of-credit right, secondary obligation, or obligation of a secondary obligor, or secondary obligation that supports the payment or performance of an Account, Chattel Paper, a document, a General Intangible, an Instrument, or Investment Property

(ccc) "**Taxes**" means all taxes, assessments, vault rentals 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

(ddd) “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, and (iii) in the Stock of any corporation, limited liability company, trust or partnership which is a stockholder, member, manager or partner of Borrower. The term “Transfer” shall also include, without limitation, the following: an installment sales agreement wherein Borrower 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 Borrower 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, Borrower’s right, title and interest in and to any Leases or any Rent, 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 Borrower, any general partner of Borrower, any general partner of any general partner of Borrower, if applicable, or, if Borrower is a limited liability company, any corporate member or manager of Borrower, the issuance of new Stock in any corporation which is Borrower, a member or manager of Borrower (if Borrower is a limited liability company), a partner of Borrower or, if applicable, a partner of a general partner of Borrower, and the merger or consolidation with any other Person of Borrower, any general partner of Borrower, any general partner of any general partner of Borrower, if applicable, or, if Borrower is a limited liability company, any corporate member or manager of Borrower.

(eee) “UCC” has the meaning given to that term in Section 2

(fff) “UCC Collateral” has the meaning given to that term in Section 2

2 (a) Uniform Commercial Code Security Agreement. This Security Instrument is also a security agreement under the Uniform Commercial Code as in effect from time to time in the State of Ohio (the “UCC”) for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the UCC, whether acquired now or in the future, and all products and cash and non-cash Proceeds thereof (collectively, “UCC Collateral”), and Borrower hereby grants to Administrative Agent for its benefit and the benefit of Lenders a security interest in the UCC Collateral. Borrower hereby authorizes Administrative Agent to file financing statements, continuation statements and financing statement amendments in such form as Administrative Agent may require to perfect or continue the perfection of this security interest and Borrower agrees, if Administrative Agent so requests, to execute and deliver to Administrative Agent such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Administrative Agent may require. Without the prior written consent of Administrative Agent, Borrower 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,

Administrative Agent shall have the remedies of a secured party under the UCC, in addition to all remedies provided by this Security Instrument or existing under applicable law. In exercising any remedies, Administrative Agent may exercise its remedies against the UCC Collateral separately or together and in any order, without in any way affecting the availability of Administrative Agent's other remedies hereunder and/or under applicable law. The terms "sign," "signed" and "signatures" shall have their ordinary meanings except that, to limited extent Administrative Agent in an authenticated record expressly agrees otherwise from time to time in the exercise of its sole and absolute discretion, the terms may also include other methods used to authenticate. Without implying any limitation on the foregoing, with respect to the UCC Collateral that may be perfected by control, Borrower shall take such steps as Administrative Agent may require in order that Administrative Agent may have such control. To the extent that the proceeds of any of the Accounts are expected to become subject to the control of, or in the possession of, a party other than Borrower or Administrative Agent, Borrower shall cause all such parties to execute and deliver on the date of this Security Instrument and from time to time hereafter security documents, financing statements or other documents as requested by Administrative Agent and as may be necessary to evidence and/or perfect the security interest of Administrative Agent in those proceeds. Borrower agrees that a copy of a fully executed security agreement and/or financing statement shall be sufficient to satisfy for all purposes the requirements of a financing statement as set forth in Article 9 of the UCC, and this Security Instrument covers property that is or may become fixtures attached or to be attached to the real property constituting the Land. Borrower hereby irrevocably appoints Administrative Agent as Borrower's attorney-in-fact, with power of substitution, in the name of Administrative Agent or in the name of Borrower or otherwise, for the use and benefit of Administrative Agent, but at the cost and expense of Borrower and without notice to Borrower, to execute and deliver any and all of the instruments and other documents and take any action which Administrative Agent may require pursuant the foregoing provisions of this Section. Further, to the extent permitted by applicable laws, Administrative Agent may file, without Borrower's signature, one or more financing statements or other notices disclosing Administrative Agent's liens and other security interests. All financing statements and notices may describe Administrative Agent's collateral as all assets or all personal property of Borrower. Borrower hereby ratifies and confirms the validity of any and all financing statements filed by Administrative Agent prior to the date of this Security Instrument.

(b) **Fixture Filing.** It is intended that as to the fixtures, as such term is defined in Ohio Rev Code 1309.102(A)(41), that are part of the Mortgaged Property, this Security Instrument will be effective as a continuously perfected financing statement filed pursuant to Ohio Rev Code 1309.515(G) as a fixture filing from the date of the filing of this Security Instrument for record with the Recorder of Hamilton County, Ohio. In order to satisfy Ohio Rev Code 1309.502(A) and Ohio Rev Code 1309.502(B), the following information is hereby provided.

Name of Debtor
Type of Organization

Mallard Cove Senior Development, LLC
limited liability company

| | |
|------------------------------------|--|
| State of Organization | Missouri |
| Organization Number | MO LC879640 |
| Name of Secured Party | Community & Southern Bank |
| Address of Secured Party | 3333 Riverwood Parkway Suite 350 Atlanta, GA 30339 |
| Record Owner of Mortgaged Property | Mallard Cove Senior Development, LLC |

3 Leases. Borrower shall not, without the prior written consent and approval of Administrative Agent, unless otherwise expressly permitted by the Loan Agreement (a) enter into any Lease (other than leases and occupancy agreements in the ordinary course of business with Facility residents), or (b) enter into or permit any management agreement of or affecting any part of the Mortgaged Property

4 Application Of Payments. If at any time Administrative Agent receives, from Borrower or otherwise, any amount applicable to the Loan Obligations which is less than all amounts due and payable at such time, then Administrative Agent may apply that payment to amounts then due and payable in the manner set forth in the Loan Agreement. Neither Administrative Agent's acceptance of an amount which is less than all amounts then due and payable nor Administrative Agent'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 Loan Obligations, Borrower's obligations under this Security Instrument, the Loan Agreement and the Note shall remain unchanged

5 Use Of Property. Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Administrative Agent, allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Security Instrument was executed, (b) convert any part of the Facility to commercial use other than as currently used, or (c) initiate or acquiesce in a change in the zoning classification of the Land and/or the Facility

6 Protection Of Administrative Agent's Security.

(a) If Borrower fails to perform any of its obligations under this Security Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Administrative Agent's security or Administrative Agent's rights under this Security Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Administrative Agent at Administrative Agent's option and following notice to Borrower and Borrower's failure to promptly address the same (except that no notice shall be required if Administrative Agent, in its good faith opinion, deems prompt action necessary to protect or preserve the Mortgaged Property or Administrative Agent's rights therein) may make such appearances, disburse such sums and take such actions as Administrative Agent reasonably

deems necessary to perform such obligations of Borrower and to protect Administrative Agent's interest, including (i) disbursement of fees and out of pocket expenses of attorneys, accountants, inspectors and consultants, (ii) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (iii) procurement of the insurance coverages required under the Loan Agreement, and (iv) payment of amounts which Borrower has failed to pay under Section 8

(b) Any amounts disbursed or advanced by Administrative Agent under this Section, or under any other provision of this Security Instrument, or under any of the other Loan Documents, shall be added to, and become part of the Loan Obligations secured hereby and constitute costs incurred for the protection of the Mortgaged Property as contemplated by Section 5301.233 of the Ohio Revised Code, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the Default Rate

(c) Nothing in this Section shall require Administrative Agent to incur any expense or take any action

7 **Inspection.** Administrative Agent, 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 notice to Borrower (which may be oral) except in an emergency or during the continuance of an Event of Default

8 **Taxes; Operating Expenses.**

(a) Subject to the provisions of Section 8(c), Borrower 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 Section 8(c), Borrower 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) Borrower, 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) Borrower notifies Administrative Agent 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 Administrative Agent, (iii) if requested by Administrative Agent, Borrower deposits with Administrative Agent cash reserves or other collateral sufficient to pay the contested Imposition, (iv) Borrower furnishes whatever security is required in the proceedings or is reasonably requested by Administrative Agent, which may include the delivery to Administrative Agent of the reserves established by Borrower to pay the

contested Imposition, as additional security, and (v) such contest operates to suspend enforcement of such Imposition

(d) Borrower shall promptly deliver to Administrative Agent a copy of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Administrative Agent receipts evidencing such payments

(e) In the event of the passage of any law subsequent to the date of this Security 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 Administrative Agent or any Lender (including, without limitation, a requirement that internal revenue stamps be affixed to this Security Instrument or any of the other Loan Documents), Borrower will promptly pay any such tax. If Borrower fails to make such prompt payment, or if any law prohibits Borrower from making such payment or would penalize Administrative Agent or any Lender if Borrower makes such payment, then the entire unpaid balance of the Loan Obligations shall, without notice, immediately become due and payable at the sole option of Administrative Agent. In no event, however, shall any income taxes of Administrative Agent or any Lender or franchise taxes of Administrative Agent or any Lender measured by income, or taxes in lieu of such income taxes or franchise taxes, be required to be paid by Borrower.

9 **Liens; Encumbrances.** Borrower 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" which constitutes an Event of Default as provided under Section 13

10 **Preservation, Management And Maintenance Of Mortgaged Property.** Borrower (a) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (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 Administrative Agent may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, except to the extent Administrative Agent applies such insurance proceeds or condemnation awards to reduce the Loan Obligations, (d) shall keep the Mortgaged Property in good repair, including the replacement of Personality and Fixtures with items of equal or better function and quality, (e) shall provide for professional management of the Mortgaged Property by a manager satisfactory to Administrative Agent, in its sole discretion, under a contract approved by Administrative Agent in writing, and (f) shall give notice to Administrative Agent of and, unless otherwise directed in writing by Administrative Agent, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Administrative Agent's security or Administrative Agent's rights under this Security Instrument. Borrower shall not (and shall not permit any other person to) remove, demolish or alter the Mortgaged Property.

or any part of the Mortgaged Property except in connection with the replacement of tangible Personality

11 Condemnation.

(a) Borrower shall promptly notify Administrative Agent 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") Borrower shall appear in and prosecute or defend any proceeding relating to any Condemnation unless otherwise directed by Administrative Agent in writing Borrower authorizes and appoints Administrative Agent as attorney-in-fact for Borrower to commence, appear in and prosecute, in Administrative Agent's or Borrower'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 shall require Administrative Agent to incur any expense or take any action Borrower hereby transfers and assigns to Administrative Agent all right, title and interest of Borrower 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 the Loan Agreement, Administrative Agent, in its sole discretion, may apply such awards or proceeds, after the deduction of Administrative Agent's expenses incurred in the collection of such amounts, at Administrative Agent's option, to the restoration or repair of the Mortgaged Property or to the payment of the Loan Obligations, with the balance, if any, to Borrower Unless Administrative Agent otherwise agrees in writing, any application of any awards or proceeds to the Loan Obligations shall not extend or postpone the due date of any monthly installments referred to in the Note or this Security Instrument, or change the amount of such installments Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Administrative Agent may require

12 Transfers. No Transfer shall be permitted without Administrative Agent's prior written consent, which may be withheld in Administrative Agent's sole and absolute discretion, except that (a) a conveyance by a member of Borrower of its ownership interests in Borrower, or a conveyance by an owner of its ownership interests in a member of Borrower, in full or in part, and not as security for a debt or other obligation, shall be permitted so long as Guarantor, or a trust controlled by Guarantor, maintain greater than 50% of such ownership interests, and (b) a security interest granted by a transferee in a permitted transfer under part (a) to the selling member for the unpaid balance of the purchase price shall be permitted but such security interest is not transferable by the selling member

13 Events Of Default. The occurrence of any one or more of the following shall constitute an Event of Default under this Security Instrument

(a) any failure by Borrower to pay or deposit within ten (10) days after the same becomes due any amount required by the Note, this Security Instrument or any other Loan Document,

(b) any Transfer described in Section 12 other than one expressly permitted without Administrative Agent's consent or one to which Administrative Agent has granted its written consent, or

(c) any breach or default under any Loan Document other than this Security Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document, or any "Event of Default" pursuant to, and as defined in, any other Loan Document

14 Remedies.

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

(b) Uniform Commercial Code Administrative Agent shall have all of the rights and remedies of a secured party under the UCC Upon demand by Administrative Agent, Borrower shall assemble the UCC Collateral and make it available to Administrative Agent, at a place designated by Administrative Agent Administrative Agent or its agents may without notice from time to time enter upon Borrower's premises to take possession of the UCC Collateral, to remove it, to render it unusable, to process it or otherwise prepare it for sale, or to sell or otherwise dispose of it

Any written notice of the sale, disposition or other intended action by Administrative Agent with respect to the UCC Collateral which is sent by regular mail, postage prepaid, to Borrower at the address of Borrower which may from time to time be shown on Administrative Agent's records, at least ten (10) days prior to such sale, disposition or other action, shall constitute commercially reasonable notice to Borrower Administrative Agent may alternatively or additionally give such notice in any other commercially reasonable manner Nothing in this Security Instrument shall require Administrative Agent to give any notice not required by applicable laws

If any consent, approval, or authorization of any state, municipal or other governmental department, agency or authority or of any person, or any person, corporation, partnership or other entity having any interest therein, should be necessary to effectuate any sale or other disposition of the UCC Collateral, Borrower agrees to execute all such applications and other instruments, and to take all other action, as may be required in connection with securing any such consent, approval or authorization

Borrower recognizes that Administrative Agent may be unable to effect a public sale of all or a part of the UCC Collateral consisting of securities by reason of certain prohibitions contained in the Securities Act of 1933, as amended (the "1933 Act"), and other applicable federal and state laws. Administrative Agent may, therefore, in its discretion, take such steps as it may deem appropriate to comply with such laws and may, for example, at any sale of the UCC Collateral consisting of securities restrict the prospective bidders or purchasers as to their number, nature of business and investment intention, including, without limitation, a requirement that the Persons making such purchases represent and agree to the satisfaction of Administrative Agent that they are purchasing such securities for their account, for investment, and not with a view to the distribution or resale of any thereof. Borrower covenants and agrees to do or cause to be done promptly all such acts and things as Administrative Agent may request from time to time and as may be necessary to offer and/or sell the securities or any part thereof in a manner which is valid and binding and in conformance with all applicable laws. Upon any such sale or disposition, Administrative Agent shall have the right to deliver, assign and transfer to the purchaser thereof the UCC Collateral consisting of securities so sold.

(c) Right to Enter and Take Possession

(i) If an Event of Default shall exist, Borrower, upon demand of Administrative Agent, shall forthwith surrender to Administrative Agent the actual possession of the Mortgaged Property and, if and to the extent permitted by law, Administrative Agent 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 Borrower and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Borrower relating thereto,

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

(iii) Upon every such entering or taking of possession, Administrative Agent 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 Fixtures, Personality 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 Borrower to the same extent as Borrower 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 Administrative Agent, all as Administrative Agent from time to time may determine to be in its best interest. Administrative Agent 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 Administrative Agent, (4) such Taxes, assessments and other similar charges as Administrative Agent may at its option pay, (5) other proper charges upon the Mortgaged Property or any part thereof, and (6) the actual fees, expenses and disbursements of the attorneys and agents of Administrative Agent, Administrative Agent shall apply the remainder of the monies and proceeds so received by Administrative Agent, first, to the payment of accrued interest, second, to the payment of Impositions that Administrative Agent elects to pay and to other sums required to be paid hereunder, and third, to the payment of overdue installments of principal and any other unpaid Loan Obligations then due. Anything in this Section to the contrary notwithstanding, Administrative Agent shall not incur any liability as a result of any exercise by Administrative Agent of its rights under this Security Instrument, and Administrative Agent shall be liable to account only for the Rents actually received by Administrative Agent,

(iv) Whenever all the Loan Obligations shall have been paid and all Events of Default shall have been cured, Administrative Agent shall surrender possession of the Mortgaged Property to Borrower, 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.

(d) Establishment of a Deposit Account If an Event of Default shall exist, Administrative Agent may require that Borrower cause all of its Accounts to be paid to one or more deposit accounts with Administrative Agent, or at Administrative Agent's option, with another financial institution approved by Administrative Agent. Borrower assigns and grants to Administrative Agent for its benefit and for the benefit of Lenders 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. Borrower agrees to promptly notify all of its account debtors to make payments to one or more such deposit accounts upon Administrative Agent's request and as designated by Administrative Agent, and Borrower 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. Administrative Agent may require that the deposit accounts be established so as to comply with any applicable Reimbursement Contracts, if any, and other requirements applicable to payments of any accounts receivable. Administrative Agent may

cause moneys to be withdrawn from such deposit accounts and applied to the Loan Obligations in such order as Administrative Agent may elect, whether or not then due, subject to any requirements of the Loan Agreement. Borrower appoints Administrative Agent as Borrower's attorney-in-fact, which appointment is coupled with an interest and is irrevocable, to provide any notice, endorse any check, draft or other payment for deposit, or take any other action which Borrower agrees to undertake in accordance with this Section. Administrative Agent shall not be liable for failure to collect or to enforce any Accounts or for any action or omission on the part of Administrative Agent, its officers, agents and employees in collecting or enforcing such Accounts,

(e) Performance by Administrative Agent Upon the occurrence of any breach or Event of Default, Administrative Agent may, at its sole option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Administrative Agent in connection therewith, with interest thereon at the Default Rate 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 Borrower to Administrative Agent. Notwithstanding anything to the contrary herein, Administrative Agent shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

(f) Receiver If any Event of Default shall exist, Administrative Agent, 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 Loan Obligations or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and the Facility and to collect and apply the Rents and to sell all or any part of the Mortgaged Property to the extent approved by the court appointing such receiver. The receiver shall have all the rights and powers permitted under the laws of the Property Jurisdiction including the right to sell the Mortgaged Property as aforesaid. Borrower will pay unto Administrative Agent 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 the Borrower's failure to pay the same, any such amounts shall be added to the Loan Obligations and shall be secured by this Security Instrument.

(g) Administrative Agent's Power of Enforcement If an Event of Default shall exist, Administrative Agent may, in addition to and not in abrogation of any other rights set forth in this Security Instrument, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law 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 cause the Mortgaged Property to be sold to satisfy the Loan Obligations (and except as required by law, neither Borrower nor any other person or entity other than Administrative Agent shall have the right to direct the order in which the Mortgaged Property is sold), (iii) to foreclose this Security Instrument and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by applicable law, and (iv) to pursue any other remedy available to it at law or in equity, all as Administrative Agent shall deem most effectual.

for such purposes hereunder, and pursue any other security now or later held by Administrative Agent, concurrently or successively and in one or several consolidated or independent actions, and to apply the proceeds received upon the Loan Obligations all in such order and manner as is hereinafter set forth or as Administrative Agent determines in its sole discretion. Administrative Agent shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Administrative Agent may determine. In the event the Mortgaged Property is comprised of more than one parcel of real property, Borrower hereby waives any right to require Administrative Agent to foreclose or exercise any of its other remedies before proceeding against all of the Mortgaged Property as a whole or to require Administrative Agent to foreclose or exercise such remedies against one portion of the Mortgaged Property prior to the foreclosure or exercise of said remedies against other portions of the Mortgaged Property.

(h) Purchase by Administrative Agent Upon any foreclosure sale, Administrative Agent may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Loan Obligations as a credit to the purchase price.

(i) Application of Proceeds of Sale In the event of a foreclosure or other sale of all or any portion of the Mortgaged Property, the proceeds of said sale shall be applied as required by applicable law and, to the extent not inconsistent therewith, first, to the expenses of such sale or suit, including, without limitation, those hereafter enumerated, and of all proceedings in connection therewith, including actual attorney's fees and expenses (and 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 or incurred by Administrative Agent hereunder, and interest thereon, then to payment of the Loan Obligations in such order of priority as Administrative Agent shall determine, in its sole discretion, subject to the requirements of the Loan Agreement, and which shall include an amount equal to any outstanding letters of credit issued pursuant to the Loan Agreement, and finally the remainder, if any, shall be paid to Borrower, or to the person or entity lawfully entitled thereto. Borrower will pay a reasonable fee for title searches, sale guarantees, publication costs, appraisal reports or environmental assessments made in preparation for and in the conduct of any such proceedings or suit. All of the foregoing amounts must be paid to Administrative Agent as part of any reinstatement tendered hereunder. In the event of any legal proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Administrative Agent.

(j) Borrower as Tenant Holding Over In the event of any such foreclosure sale, Borrower (if Borrower 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.

(k) Waiver of Appraisement, Valuation, Etc Borrower agrees, to the full extent permitted by law, that in case of an Event of Default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower will assert, claim or seek to take advantage of any appraisement, 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 Security 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

(l) Discontinuance of Proceedings In case Administrative Agent shall have proceeded to enforce any right, power or remedy under this Security 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 Administrative Agent, then in every such case, Borrower and Administrative Agent shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Administrative Agent shall continue as if no such proceedings had occurred

(m) Waiver

(i) No delay or omission by Administrative Agent 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 Security Instrument to Administrative Agent may be exercised from time to time and as often as may be deemed expedient by Administrative Agent. No consent or waiver expressed or implied by Administrative Agent to or of any breach or default by Borrower in the performance of the obligations of Borrower 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 Borrower hereunder. Failure on the part of Administrative Agent 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 Administrative Agent of its rights hereunder or impair any rights, powers or remedies of Administrative Agent hereunder

(ii) No act or omission by Administrative Agent shall release, discharge, modify, change or otherwise affect the original liability under the Note, this Security Instrument, other Loan Documents or any other obligation of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude Administrative Agent 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 Security Instrument, except as expressly provided in an instrument or instruments executed by Administrative Agent. Without limiting the generality of the foregoing, Administrative Agent may (A) grant forbearance or an extension of time for the payment of all or any

portion of the Loan Obligations, (B) take other or additional security for the payment of any of the Loan Obligations, (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 Security Instrument or otherwise change any of the terms, covenants, conditions or agreements of the Note, this Security 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 Security Instrument, the other Loan Documents, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to the Security Instrument, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Administrative Agent from exercising any such right, power or privilege with respect to the lien of this Security Instrument. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Administrative Agent, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with respect to the Mortgaged Property or the Loan Obligations, 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 Borrower, any guarantor of the Loan Obligations or others.

(iii) Borrower waives and relinquishes any and all rights it may have, whether at law or equity, to require Administrative Agent 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. Borrower expressly waives and relinquishes any and all rights and remedies that Borrower 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.

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

(n) Suits to Protect the Mortgaged Property Administrative Agent shall have power to institute and maintain such suits and proceedings as it may 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 Security 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 Administrative Agent or Lenders.

(o) Proofs of Claim In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its properties, Administrative Agent, 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 Administrative Agent allowed in such proceedings for the entire amount due and payable by Borrower under this Security Instrument at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date

(p) Actions Without Borrower's Consent Borrower agrees that Administrative Agent may do any one or all of the following without notice to or the consent of Borrower and without affecting Administrative Agent's rights or remedies against Borrower (i) accept partial payment of, compromise, settle, renew, extend the time for payment or performance of, or refuse to enforce any of Borrower's Loan Obligations to Administrative Agent and Lenders under or in connection with this Security Instrument or any of the other Loan Documents, (ii) grant any indulgence or forbearance to the Borrower, 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 Loan Obligations, (iv) release, substitute or add any one or more endorsers or guarantors of any or all of the Loan Obligations, and (v) exercise any right or remedy with respect to the Loan Obligations or any collateral securing the Loan Obligations, notwithstanding any effect on or impairment of Borrower's subrogation, reimbursement or other rights against Guarantor or any other Person under or in connection with any or all of the Loan Documents

(q) Attorneys' Fees This Security Instrument is, and for purposes of recovering attorneys' fees as provided in Section 1301.21 of the Ohio Revised Code, shall be a "contract of indebtedness" as defined therein

15 Remedies Cumulative. Each right and remedy provided in this Security Instrument is distinct from all other rights or remedies under this Security 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

16 Forbearance.

(a) Administrative Agent may agree with the Borrower, from time to time, at Administrative Agent's option and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of Guarantor or other third party obligor, extend the time for payment of all or any part of the Loan Obligations, reduce the payments due under this Security Instrument, the Note, or any other Loan Document, release anyone liable for the payment of any amounts under this Security Instrument, the Note, or any other Loan Document, accept a renewal of the Note, modify the terms and time of payment of the Loan Obligations, 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 23106101 v2

Note or change the amount of the monthly installments payable under the Note, or otherwise modify this Security Instrument, the Note, or any other Loan Document

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

17 **Loan Charges.** If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower 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 Borrower 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 Administrative Agent in excess of the permitted amounts shall be applied by Administrative Agent and Lenders to reduce the principal of the Loan Obligations. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Loan Obligations which constitute interest, as well as all other charges levied in connection with the Loan Obligations 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.

18 **Waiver Of Statute Of Limitations.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce any Loan Document.

19 **Waiver Of Marshalling.** Notwithstanding the existence of any other security interests in the Mortgaged Property held by Administrative Agent or by any other party, Administrative Agent 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 Security Instrument, the Note, the Loan Agreement, any other Loan Document or under applicable law. Administrative Agent shall have the right to determine the order in which any or all portions of the Loan Obligations are satisfied from the proceeds realized upon the exercise of such remedies. Borrower 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 Security 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 Security Instrument

20 **Further Assurances.** Borrower 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 Administrative Agent may require from time to time in order to better assure, grant, and convey to Administrative Agent the rights intended to be granted, now or in the future, to Administrative Agent under this Security Instrument and the Loan Documents

21 **Estoppel Certificate.** Within ten (10) days after a request from Administrative Agent, Borrower shall deliver to Administrative Agent a written statement, signed and acknowledged by Borrower, certifying to Administrative Agent or any person designated by Administrative Agent, 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 no Borrower is in default in paying the Loan Obligations or in performing or observing any of the covenants or agreements contained in this Security Instrument or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail), (e) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Administrative Agent under the Loan Documents, and (f) any additional facts requested by Administrative Agent

22 **Governing Law; Consent To Jurisdiction And Venue.**

(a) This Security Instrument shall be governed by the laws of the State of Ohio. This Security Instrument shall secure advances pursuant to Ohio Rev Code 5301.233

(b) Each of Borrower and Administrative Agent consents to the jurisdiction of any and all state and federal courts with jurisdiction in the Property Jurisdiction over Borrower and Borrower's assets. Borrower 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 Borrower in the United States shall be considered part of any foreign bankruptcy estate

(c) Each of Borrower and Administrative Agent agrees that any controversy arising under or in relation to the Note, this Security Instrument, or any other Loan Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have nonexclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Loan Obligations, or any other Loan Document. Borrower irrevocably consents to service, 23106101 v2

jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise

23 **Notice.**

(a) All notices, demands and other communications ("Notice") under or concerning this Security Instrument shall be in writing. Each Notice shall be addressed to the intended recipient at its address set forth in this Security Instrument, and shall be deemed given on the earliest to occur of (i) the date when the Notice is received by the addressee, (ii) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery, or (iii) the third 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 Security 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. Each party agrees that it will not refuse or reject delivery of any Notice given in accordance with this Section, that it will acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it shall be deemed for purposes of this Section to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U S Postal Service or the courier service

(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

(d) A copy of any Notice sent to Administrative Agent pursuant to this Section shall be sent to

Dwight L Mixson, Jr
Burr & Forman LLP
420 North 20th Street
Suite 3400
Birmingham, Alabama 35203

(e) A copy of any Notice sent to Borrower pursuant to this Section shall be sent to

Thomas B Smallwood
Stinson Leonard Street LLP
7700 Forsyth Boulevard
Suite 1100
St Louis, Missouri 63105

24 **Single-Purpose Entity.** Until the Loan Obligations are paid in full and all secured obligations are fully performed, Borrower 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 the Loan Agreement

25 **Subrogation.** If, and to the extent that, the proceeds of the Loan are used to pay, satisfy or discharge any obligation of Borrower 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 Administrative Agent and Lenders at Borrower's request, and Administrative Agent and Lenders shall automatically, and without further action on their 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

26 **Administrative Agent Statement; Certain Charges.** With respect to (a) any statement, accounting, or similar information requested by Borrower or any other Person pursuant to applicable law, or (b) any other document furnished to Borrower or any other Person by Administrative Agent at Borrower's request, Administrative Agent shall have the right to charge the maximum amount then permitted by law or, if there is no such maximum, Administrative Agent's customary charge for providing such statement, accounting, or other information. Borrower shall pay Administrative Agent its customary charge for any other service rendered by Administrative Agent 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 Security Instrument, transmitting proceeds of the Loan to an escrow holder and changing Administrative Agent's records relating to the Loan Obligations

27 **Disclosure Of Information.** Administrative Agent may furnish financial information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the enforcement, evaluation, performance, purchase or securitization of the Loan Obligations, including but not limited to credit rating agencies. Borrower 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

28 **Release.** Upon Borrower's written request and provided that (i) all Loan Obligations and other obligations secured by this Security Instrument has been paid or performed in full (including any guaranteed Loan Obligations but excluding any other contingent Loan Obligations which by their terms survive the release hereof and as to which no event giving rise to the incurrence of any such Loan Obligations shall have occurred), (ii) all fees due Administrative Agent in connection with release of this Security Instrument have been paid, Administrative Agent shall release the Mortgaged Property from the lien of this Security Instrument, and (iii) any letters of credit issued pursuant to the Loan Agreement have been cancelled. Upon the payment and performance in full of all Loan Obligations (including any guaranteed Loan Obligations but excluding other contingent obligations which survive the

release hereof and as to which no event giving rise to the incurrence of any such obligation shall have occurred) and other obligations secured hereby, and upon request of Borrower, Administrative Agent shall release the lien of this Security Instrument upon the Mortgaged Property and shall surrender to Borrower the Note and all other documents evidencing the Loan Obligations and other obligations secured by this Security 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 of the Rents and profits assigned to Administrative Agent under the Assignment of Leases and Rents. Administrative Agent shall deliver this Security Instrument and request that each Lender return its Note for cancellation and delivery after release to the Person or Persons legally entitled thereto. No Loan Obligations shall be considered paid for purposes hereof unless paid under circumstances where such payment is final and not subject to refund or rescission.

29 **Execution Of Documents By Administrative Agent.** Without notice to or affecting the liability of Borrower or any other Person for the payment or performance of the Loan Obligations, without affecting the lien or priority of this Security Instrument or Administrative Agent's rights and remedies under the Loan Documents, and without liability to Borrower or any other Person, Administrative Agent 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 Loan Obligations, any document subordinating the lien of this Security Instrument to any other lien or document, or any other document relating to the Mortgaged Property, Loan Obligations, or Loan Documents.

30 **Joint And Several Liability.** If more than one Person or entity signs this Security Instrument as Borrower, the obligations of such Persons shall be joint and several.

31 **Relationship Of Parties; No Third Party Beneficiary.** The relationship between Administrative Agent, Lenders and Borrower shall be solely that of creditors and debtor, respectively, and nothing contained in this Security Instrument shall create any other relationship between Administrative Agent, Lenders and Borrower. No creditor of any party to this Security Instrument and no other person shall be a third party beneficiary of this Security Instrument or any other Loan Document.

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

33 **Miscellaneous Provisions.** The captions and headings of the sections of this Security Instrument are for convenience only and shall be disregarded in construing this Security Instrument. Any reference in this Security Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit.

23106101 v2

attached to this Security Instrument or to a section of this Security Instrument. All Exhibits attached to or referred to in this Security Instrument are incorporated by reference into this Security Instrument. Any reference in this Security 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 Security Instrument, the term "including" means "including, but not limited to."

34 **WAIVER OF TRIAL BY JURY.** BORROWER (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 BORROWER, 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. ADMINISTRATIVE AGENT IS AUTHORIZED TO SUBMIT THIS SECURITY 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 BORROWER'S WAIVER OF THE RIGHT TO JURY TRIAL. FURTHER, BORROWER CERTIFIES THAT ADMINISTRATIVE AGENT'S AND LENDERS' REPRESENTATIVES OR AGENTS HAVE NOT REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ENFORCEMENT OF THIS WAIVER WILL NOT BE SOUGHT.

35 **Successors And Assigns Bound.** This Security Instrument shall bind, and the rights granted by this Security Instrument shall inure to, the respective successors and assigns of Administrative Agent, Lenders and Borrower

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

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has caused this Security Instrument to be properly executed as of the date first above written

BORROWER.

**MALLARD COVE SENIOR DEVELOPMENT,
LLC, a Missouri limited liability company**

BY

David A. Smith

David A. Smith
Its Manager

STATE OF MISSOURI
COUNTY OF St. Louis

The foregoing instrument was acknowledged before me this 06 day of
April, 2015, by David A Smith, the Manager of Mallard Cove Senior Development,
LLC, a Missouri limited liability company, on behalf of the limited liability company

[NOTARY SEAL]

Notary Public

Print Name

My commission expires

Katie Lowe

12/18/18

**THIS SECURITY INSTRUMENT WAS PREPARED BY, AND UPON RECORDING SHOULD BE
RETURNED TO**

Dwight L Mixson, Jr
Burr & Forman LLP
420 North 20th Street
Suite 3400
Birmingham, Alabama 35203
Telephone (205) 251-3000



EXHIBIT "A"

LEGAL DESCRIPTION

ALL THOSE CERTAIN TRACT(S) OR PARCEL(S) OF LAND SITUATED IN THE CITY OF SHARONVILLE AND TOWNSHIP OF Sycamore, COUNTY OF HAMILTON AND STATE OF OHIO, AND KNOWN AS BEING PARCELS A, B AND C OF CONSOLIDATION PLAT FOR MALLARD COVE SENIOR DEVELOPMENT, LLC, RECORDED AS PLAT BOOK 432 OF MAPS, PAGE 28 AND ALSO RECORDED IN OFFICIAL RECORD 11921, PAGE 1664 OF HAMILTON COUNTY, OHIO RECORDS, IN SECTION 36, TOWN 4, ENTIRE RANGE 1, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGINNING AT AN EXISTING SPIKE AT THE INTERSECTION OF THE CENTERLINE OF MALLARD COVE DRIVE WITH THE CENTERLINE OF LIPPELMAN ROAD,

THENCE ALONG THE CENTERLINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST, 459 63 FEET TO A SET MAG NAIL AND THE REAL PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT.

THENCE CONTINUING ALONG THE CENTERLINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST 170 00 FEET TO A SET MAG NAIL,

THENCE LEAVING THE CENTERLINE OF LIPPELMAN ROAD, NORTH 87°44'00" WEST, 30 00 FEET TO A SET 5/8" IRON PIN AND CAP IN THE WESTERLY RIGHT OF WAY OF LIPPELMAN ROAD,

THENCE ALONG THE WESTERLY LINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST, 30 00 FEET TO A SET 5/8" IRON PIN AND CAP AT THE NORTHEAST CORNER OF THE PROPERTY AS CONVEYED TO AMS REAL ESTATE LLC IN OFFICIAL RECORD 10968, PAGE 968 OF THE HAMILTON COUNTY, OHIO RECORDS, SAID POINT BEING THE CENTERLINE OF CLINTON STREET (AS NOW VACATED),

THENCE ALONG THE NORtherly LINE OF SAID AMS REAL ESTATE TRACT AND THE CENTERLINE OF CLINTON STREET (AS NOW VACATED), NORTH 87°44'00" WEST, 630 12 FEET TO AN EXISTING IRON PIN AND CAP,

THENCE LEAVING THE NORtherly LINE OF SAID AMS REAL ESTATE TRACT AND THE CENTERLINE OF CLINTON STREET (AS NOW VACATED), NORTH 01°31'09" EAST, 629 63 FEET TO THE SOUTHWEST CORNER OF GARDEN PLACE SUBDIVISION AS RECORDED IN PLAT BOOK 325, PAGE 12 OF THE HAMILTON COUNTY, OHIO RECORDS, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN (BENT) WHICH IS 0 96' SOUTH AND 0 17' WEST, THENCE ALONG THE SOUTHERLY LINE OF GARDEN PLACE SUBDIVISION AND ITS EASTERLY EXTENSION, SOUTH 87°44'00" EAST, 430 12 FEET TO A SET 5/8" IRON PIN AND CAP IN THE SOUTHERLY RIGHT OF WAY OF MALLARD COVE DRIVE, SAID POINT BEING THE NORTHWEST CORNER OF THE PROPERTY AS CONVEYED TO RONALD A LIPEZ &

STANLEY CLAYBON IN OFFICIAL RECORD 10494, PAGE 1060 OF THE HAMILTON COUNTY, OHIO RECORDS,

THENCE LEAVING THE SOUTHERLY RIGHT OF WAY OF MALLARD COVE DRIVE, ALONG THE WESTERLY LINE OF SAID LIEZ & CLAYBON TRACT AND THE WESTERLY LINE OF THE PROPERTY AS CONVEYED TO ANANT P & SWADESH K SINGH IN OFFICIAL RECORD 10742, PAGE 910 OF THE HAMILTON COUNTY, OHIO RECORDS, SOUTH 01°31'09" WEST, 155 00 FEET TO A SET 5/8" IRON PIN AND CAP,

THENCE CONTINUING ALONG THE WESTERLY LINE OF SAID SINGH TRACT, THE FOLLOWING TWO COURSES AND DISTANCES, SOUTH 24°14'54" WEST, 64 70 FEET TO A SET 5/8" IRON PIN AND CAP AND SOUTH 01°31'09" WEST, 50 00 FEET TO THE SOUTHWEST CORNER OF SAID SINGH TRACT, SAID POINT BEING IN THE NORTHERLY LINE OF THE PROPERTY AS CONVEYED TO DAVID J FRANZ IN OFFICIAL RECORD 11482, PAGE 1733 OF THE HAMILTON COUNTY OHIO, RECORDS AND BEING WITNESSED BY AN EXISTING PIN AND CAP, WHICH IS 0 26 FEET NORTH,

THENCE LEAVING THE WESTERLY LINE OF SAID SINGH TRACT, ALONG THE NORTHERLY LINE OF SAID FRANZ TRACT, NORTH 87°44'00" WEST, 25 00 FEET TO THE NORTHWEST CORNER OF SAID FRANZ TRACT, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN AND CAP, WHICH IS 0 26 FEET NORTH AND 0 12 FEET EAST,

THENCE ALONG THE WEST LINE OF SAID FRANZ TRACT AND THE WESTERLY LINE OF THE PROPERTY AS CONVEYED TO BAMK PROPERTIES, LLC IN OFFICIAL RECORD 9195, PAGE 3837 OF THE HAMILTON COUNTY, OHIO RECORDS, SOUTH 01°31'09" WEST, 164 63 FEET TO THE SOUTHWEST CORNER OF THE BAMK TRACT, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN AND CAP, WHICH IS 0 31 FEET SOUTH AND 0 28 FEET WEST, THENCE ALONG THE SOUTHERLY LINE OF BAMK TRACT, SOUTH 87°44'00" EAST, (PASSING A SET 5/8" IRON PIN AND CAP AT 250 00 FEET) 280 00 FEET TO THE PLACE OF BEGINNING, THUS CONTAINING 7 0170 ACRES OF LAND

BEARINGS USED IN THIS LEGAL DESCRIPTION ARE BASED ON RANDOM BEARING SYSTEM RELATIVE TO THE EXISTING DEED OF RECORD AS RECORDED IN OFFICIAL RECORD 10896, PAGE 1238 OF THE HAMILTON COUNTY, OHIO RECORDS

THE ABOVE DESCRIBED REAL ESTATE IS ALL OF THE SAME PREMISES CONVEYED TO MALLARD COVE SENIOR DEVELOPMENT, LLC BY LIMITED WARRANTY DEED FROM NATIONWIDE HEALTH PROPERTIES, INC RECORDED IN OFFICIAL RECORD 10896, PAGE 1238 AND GENERAL WARRANTY DEED FROM BAMK PROPERTIES, LLC RECORDED IN OFFICIAL RECORD 11837, PAGE 990 OF THE HAMILTON COUNTY, OHIO RECORDS, BEING THE RESULT OF A SURVEY AND PLAT DATED JANUARY 5, 2012, MADE BY STEPHEN L CAHILL, PLS, OF ABERCROMBIE & ASSOCIATES, INC, OHIO REGISTERED SURVEYOR NUMBER 7862

TOGETHER WITH, RESERVATION OF EASEMENT AND GRANT OF EASEMENT RECORDED AS OFFICIAL RECORD 7045, PAGE 1408 OF HAMILTON COUNTY, OHIO RECORDS

EXHIBIT C-2

Scott Crowley
 Hamilton County Recorder's Office
 Doc #: 2023-0045377 Type: AM
 Filed: 07/03/23 07:06:16 AM \$42.00
 Off. Rec.: 14949 00004 F 2 3



Recording requested by:

Adams and Reese, LLP
 3424 Peachtree Road NE, Suite 1600
 Atlanta, GA 30326
 Attn: Ron C. Bingham II, Esq.

Upon recordation, return to:
 WM Capital Partners 90, LLC
 c/o WM Capital Partners
 500 West 5th Street, Suite 1010
 Austin, TX 78701

**ASSIGNMENT OF OPEN-END MORTGAGE SECURITY AGREEMENT
AND FIXTURE FILING**

This Assignment of Open-End, Mortgage, Security Agreement and Fixture Filing (this "Assignment") is made and entered into as of this 23rd day of June, 2023, by **BANK OZK**, formerly known as Bank of the Ozarks, successor by merger to Community & Southern Bank ("Assignor"), in favor of **WM CAPITAL PARTNERS 90, LLC**, a limited liability company organized and existing under the laws of the State of Delaware ("Assignee").

For good and valuable consideration, Assignor hereby assigns unto Assignee that certain Open-End, Mortgage, Security Agreement and Fixture Filing dated April 6, 2015, securing payment of a promissory note in the original principal amount of \$23,500,000.00 executed by Mallard Cove Senior Development, LLC in favor of Community & Southern Bank, recorded as document number 15-0035119 at Official Records Book 12865, Page 1250 in the Recorder's Office of Hamilton County, Ohio, as modified, renewed and extended from time to time, and in connection therewith, that certain Assignment of Leases and Rents dated April 6, 2015 executed by Mallard Cove Senior Development, LLC in favor of Community & Southern Bank, recorded as document number 15-0035120 at Official Records Book 12865, Page 01283 in the Recorder's Office of Hamilton County, Ohio.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns forever.

[Signature Page Follows.]

IN WITNESS WHEREOF, the Assignor has duly executed this Assignment under seal as of the day, month and year first above written.

Signed, sealed and delivered in the presence of:



WITNESS



NOTARY PUBLIC

My Commission Expires

Jan 11-2025

ASSIGNOR:

BANK OZK, formerly known as Bank of the Ozarks, successor by merger to Community & Southern Bank

By: 
Name: Michael S. Atkins
Title: Director, Special Assets

[AFFIX NOTARY SEAL]

[SEAL]



Scott Crowley
Hamilton County Recorder's Office
Doc #: 2023-0055476 Type: AM
Filed: 08/08/23 12:24:13 PM \$46.00
Off. Rec.: 14974 01301 F 3 266



b1497401301Fb

Recording Requested by:

/s/ Charles E. Rust

Charles E. Rust Our File No. L4115 0002
Robbins, Kelly, Patterson & Tucker LPA
312 Elm Street, Suite 2200, Cincinnati, OH 45202
(513) 721-3330; cerust@rkpt.com

Upon recording, return to:

WM Capital Partners 90, LLC
c/o WM Capital Partners
500 West 5th Street, Suite 1010
Austin, TX 78701

**CORRECTIVE ASSIGNMENT OF OPEN-END MORTGAGE SECURITY
AGREEMENT AND FIXTURE FILING**

This document is recorded in an abundance of caution to correct omissions in a certain Assignment of Open-End Mortgage Security Agreement and Fixture Filing recorded July 3, 2023 at Off. Rec. 14949 00004. Namely, the referenced instrument omitted an acknowledgement clause and Legal Description.

This Assignment of Open-End, Mortgage, Security Agreement and Fixture Filing (this "Assignment") is made and entered into as of this 23rd day of June, 2023, by BANK OZK, formerly known as Bank of the Ozarks, successor by merger to Community & Southern Bank ("Assignor"), in favor of WM CAPITAL PARTNERS 90, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Assignee").

For good and valuable consideration, Assignor hereby assigns unto Assignee that certain Open-End, Mortgage, Security Agreement and Fixture filing dated April 6, 2015, securing payment of a promissory note in the original principal amount of \$23,500,000.00 executed by Mallard Cove Senior Development, LLC in favor of Community & Southern Bank, recorded as document number 15-0035119 at Official Records Book 12865, Page 1250 in the Recorder's Office of Hamilton County, Ohio, as modified, renewed and extended from time to time, and in connection therewith, that certain Assignment of Leases and Rents dated April 6, 2015 executed by Mallard Cove Senior Development, LLC in favor of Community & Southern Bank, recorded as document number 15-0035120 at Official Records Book 12865, Page 01283 in the Recorder's Office of Hamilton County, Ohio, less the Partial Release of Mortgage and Assignment of Leases and Rents recorded as document number 2019-0037199 at Official Records Book 13917, Page 1531 in the Recorder's Office of Hamilton County, Ohio, the balance of which encumbers the real property described in the attached Exhibit "A" including improvements located thereon.

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns forever.

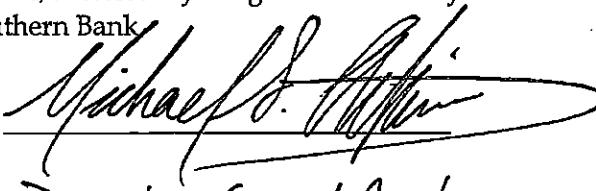
[REDACTED]

IN WITNESS WHEREOF, the Assignor has duly executed this Assignment under seal as of the day, month and year first above written.

ASSIGNOR

BANK OZK., formerly known as Bank of the Ozarks, successor by merger to Community & Southern Bank

By:


Title: Director, Special Assets

State of Georgia
County of Lowndes

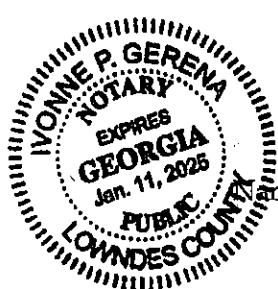
This instrument was acknowledged before me this 7th day of August, 2023, by Michael S. Atkins as Director, Special Assets of Bank OZK, formerly known as Bank of the Ozarks, successor by merger to Community & Southern Bank, an Arkansas banking corporation, on behalf of the corporation.

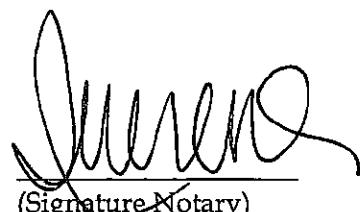


Personally Known
Produced Identification

Type and # of ID _____

(Seal)




(Signature Notary)

Name of Notary Typed, Stamped or Printed)
Notary Public, State of Georgia

EXHIBIT "A"

LEGAL DESCRIPTION

SITUATE IN SECTION 36, TOWN 4, ENTIRE RANGE 1, Sycamore Township, City of Sharonville, Hamilton County, Ohio and being more particularly described as follows:

BEGINNING AT AN EXISTING SPIKE AT THE INTERSECTION OF THE CENTERLINE OF MALLARD COVE DRIVE WITH THE CENTERLINE OF LIPPELMAN ROAD; THENCE ALONG THE CENTERLINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST, 459.63 FEET TO A SET MAG NAIL AND THE REAL PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE CONTINUING ALONG THE CENTERLINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST 170.00 FEET TO A SET MAG NAIL; THENCE LEAVING THE CENTERLINE OF LIPPELMAN ROAD, NORTH 87°44'00" WEST, 30.00 FEET TO A SET 5/8" IRON PIN AND CAP (#7862) IN THE WESTERLY RIGHT OF WAY OF LIPPELMAN ROAD; THENCE ALONG THE WESTERLY LINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST, 30.00 FEET TO A SET 5/8" IRON PIN AND CAP (#7862) AT THE NORTHEAST CORNER OF THE PROPERTY AS CONVEYED TO AMS REAL ESTATE LLC IN OFFICIAL RECORD 10968, PAGE 968 OF THE HAMILTON COUNTY, OHIO RECORDS, SAID POINT BEING IN THE CENTERLINE OF CLINTON STREET (AS NOW VACATED); THENCE ALONG THE NORTHERLY LINE OF SAID AMS REAL ESTATE TRACT AND ALONG THE CENTERLINE OF CLINTON STREET (AS NOW VACATED), NORTH 87°44'00" WEST, 630.12 FEET TO AN EXISTING IRON PIN AND CAP; THENCE LEAVING THE NORTHERLY LINE OF SAID AMS REAL ESTATE TRACT AND THE CENTERLINE OF CLINTON STREET (AS NOW VACATED), NORTH 01°31'09" EAST, 629.63 FEET TO THE SOUTHWEST CORNER OF GARDEN PLACE SUBDIVISION AS RECORDED IN PLAT BOOK 925, PAGE 12 OF THE HAMILTON COUNTY, OHIO RECORDS, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN (BENT) WHICH IS 0.96 FEET SOUTH AND 0.17 FEET WEST; THENCE ALONG THE SOUTHERLY LINE OF SAID GARDEN PLACE SUBDIVISION AND ITS EASTERLY EXTENSION, SOUTH 87°44'00" EAST, 380.12 FEET TO A SET 5/8" IRON PIN AND CAP (#7862) IN THE SOUTHERLY RIGHT OF WAY DE

MALLARD COVE DRIVE; THENCE LEAVING THE SOUTHERLY RIGHT OF WAY OF MALLARD COVE DRIVE, SOUTH 01°31'09" WEST, 429.63 FEET TO THE SOUTHWEST CORNER OF THE PROPERTY AS CONVEYED TO MALLARD COVE LAND, LLC IN OFFICIAL RECORD 12348, PAGE 2209 OF THE HAMILTON COUNTY, OHIO RECORDS, BEING WITNESSED BY AN EXISTING IRON PIN AND CAP, WHICH IS 0.31 FEET SOUTH AND 0.28 FEET WEST; THENCE ALONG THE SOUTHERLY LINE OF MALLARD COVE TRACT, SOUTH 87°44'00" EAST, (PASSING A SET 5/8" IRON PIN AND CAP AT 250.00 FEET) 280.00 FEET TO THE PLACE OF BEGINNING.

THUS CONTAINING 6.7587 ACRES OF LAND AND BEING SUBJECT TO THE RIGHT OF WAY OF LIPPELMAN ROAD AND ALL EASEMENTS AND RESTRICTIONS OF RECORD.

BEARING USED IN THIS LEGAL DESCRIPTION ARE BASED ON RANDOM BEARING SYSTEM RELATIVE TO THE EXISTING DEED OF RECORD AS RECORDED IN OFFICIAL RECORD 10896, PAGE 1238 OF THE HAMILTON COUNTY, OHIO RECORDS.

THE ABOVE DESCRIBED REAL ESTATE IS ALL OF THE SAME PREMISES DESCRIBED IN OFFICIAL RECORD 10896, PAGE 1238 AND OFFICIAL RECORD 11837, PAGE 990 OF THE HAMILTON COUNTY, OHIO RECORDS, BEING THE RESULT OF A SURVEY AND PLAT DATED DECEMBER 5, 2016, MADE BY STEPHEN L CAHILL, PLS, OF ABERCROMBIE & ASSOCIATES, INC., OHIO REGISTERED SURVEYOR NUMBER 7862.

EXHIBIT D

Wayne Coates
Hamilton County Recorders Office
Doc #: 15-U1C512H Type: MT
Filed: 04/09/15 10:12:46 AM \$100.00
Off. Rec: 12865 11283 F 037 11 215

1286511283FB

ASSIGNMENT OF LEASES AND RENTS

342949

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment"), dated as of the 6 day of April, 2015, is made by **MALLARD COVE SENIOR DEVELOPMENT, LLC**, a Missouri limited liability company (hereinafter called the "Assignor"), whose address is 1 McKnight Place, St Louis, Missouri 63214, Attention David A Smith, in favor of **COMMUNITY & SOUTHERN BANK**, a Georgia state banking corporation, as administrative agent (hereinafter called the "Administrative Agent" or "Assignee"), whose address is 3333 Riverwood Parkway, Suite 350, Atlanta, Georgia 30339, Attention Ms Kelly Harrison

I. RECITALS:

Pursuant to a Loan Agreement by and between Assignor, Assignee and Lenders (as defined therein) (as the same may hereafter be amended or supplemented, the "Loan Agreement", all defined terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement) Borrower has requested and Lenders have agreed to make a loan or loans in the principal amount of up to TWENTY-THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$23,500,000.00) (the "Loan"), and this Assignment is made or additional security for repayment of the Loan and as security for certain other Loan Obligations. The Loan is evidenced by one or more Promissory Notes of even date herewith, executed and delivered by Assignor to Lenders, in said aggregate principal amount (as the same may hereafter be extended, renewed, modified, amended or replaced, collectively the "Note") The Loan is secured in part by the real property more particularly described on Exhibit "A" attached hereto and the improvements located thereon (collectively, the "Property")

II. GRANTING CLAUSES:

In consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration and to secure the payment of the Note and any and all renewals, extensions, modifications, and replacements thereof, and to assure performance of the agreements contained herein and in the Loan Documents, Assignor hereby assigns to Assignee, for its benefit and the benefit of Lenders (to the fullest extent assignable), Assignor's right, title and interest (if any) in

21 Any and all oral and written leases, if any, and other agreements for the use or occupancy of the Property made or agreed to by, any person or entity (including, without limitation of the foregoing, Assignor and Assignee under the powers granted herein) and any and all amendments, extensions, renewals, modifications and replacements thereof pertaining to all or any part of the Property, whether such leases or other agreements have been heretofore or are hereafter made or agreed to (such leases and other use and occupancy agreements being collectively referred to herein as the "Leases"),

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

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

24 Any and all guaranties (collectively, the "Guaranties") of any of the Leases, and the rights, powers, privileges and other benefits of the Assignor under the Guaranties,

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

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

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

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

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

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

(f) the right to exercise any option required or permitted,

and Assignor authorizes Assignee, following an Event of Default, as follows

- (i) to manage the Property and let and relet the Property, or any part thereof according to Assignee's own discretion,
- (ii) to prosecute or defend any suits in connection with the Property in the name of any or all of Assignee or Assignor as it may consider desirable,
- (iii) to enforce or take any other action in connection with the Leases in the name of any or all of Assignee or Assignor,
- (iv) to make such repairs to the Property as Assignee may deem reasonably advisable, and
- (v) to do anything in or about the Property that Assignee may deem reasonably advisable or that the Assignor has the right or power to do

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

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

III. COVENANTS:

3 1 No Other Assignment Assignor warrants, represents, and covenants that it is the sole owner of the entire lessor's interest in the Leases and has full right to assign the Leases and the Rents due or to become due thereunder, that there has been no previous and, without Assignee's prior written consent as to form and substance, Assignor will permit no future assignment (as collateral or otherwise) of the Assignor's right, title, and interest in any of the Leases, that the Leases are in full force and effect in accordance with their terms and have not been altered, modified, or amended in any manner whatsoever, except as otherwise disclosed to Assignee, that, to Assignor's actual knowledge as of the date hereof, the lessees are not in default under the Leases and to the best of Assignor's knowledge, have no defenses, setoffs, or counterclaims against the lessor under the Leases, that no Rent reserved in the Leases has been assigned or anticipated, and that no Rent for any period subsequent to the date hereof has been collected for more than one (1) month in advance of the time when the said Rent becomes or would become due under the terms of the Leases except for (a) security deposits, (b) Assignor's residents in up to 10% of the units that elect to prepay rent (up to but not exceeding 12 months)

received in the ordinary course of Assignor's business, and (c) as otherwise disclosed in writing to Assignee by Assignor and consented to by Assignee, not to be unreasonably withheld

3 2 Management At all times until this Assignment is released, or until the assignment granted hereby is exercised by Assignee, and at all times thereafter during which Assignee is not in actual or constructive possession of the Property, Assignor shall cause the Property to be managed in accordance with sound business practices and cause to be performed all obligations imposed upon the lessor under the Leases and not do or permit to be done anything to impair the security thereof Assignor shall not permit any of the Rents to be collected in advance, except that monthly Rent due and payable under the Leases may be collected for each current month in advance Except as part of the operation of Assignor's business as a residential care facility in the ordinary course of business prior to any Event of Default and as otherwise expressly permitted in the Loan Agreement, Assignor shall not (a) terminate, alter, modify, amend or change any of the terms of any of the Leases or the Guarantees or (b) give any consent, concession or waiver under any of the Leases or (c) exercise any option available to the lessor under the Leases in the event of casualty damage or condemnation affecting the Property or (d) accept the surrender thereof or (e) consent to any assignment or subletting under any of the Leases or (f) convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any or all of the Leases or of any interest therein, so as, in any such case, to effect directly or indirectly, promptly or remotely, a merger of the estates and rights of, or a termination or elimination of, the obligations of lessees thereunder, without the prior written consent of the Assignee Assignor shall not make any other assignment of any interest in the Leases or the Rents accruing from such Leases or from the Property, or subordinate any of the Leases to any deed of trust, mortgage, or other encumbrance, or permit, consent, or agree to such subordination without the prior written consent of the Assignee Assignor shall cause prompt action, including legal proceedings, for enforcement of any of the Leases and all other remedies available to lessor thereunder to be commenced against any delinquent or defaulting lessee to protect such lessor's interest or immediately upon written request from Assignee, and in the event Assignee requests that such a specific action be taken, to use all reasonable efforts to cause such action to be taken promptly Assignor shall, but only at the discretion of Assignee, give any consent of lessor under any of the Leases, or exercise any option available to lessor under any of the Leases in the event of casualty or condemnation affecting the Property Assignor shall execute and deliver, at the written request of Assignee, all such further assurances and assignments as Assignee from time to time shall require

3 3 Execution of Leases Except for leases to Assignor's residents entered into in the ordinary course of business, Assignor shall not permit any Leases to be made hereafter of all or any portion of the Property, other than Leases first submitted to and approved by Assignee and in compliance with the conditions of the Loan Agreement, provided nothing herein is intended to limit, or require prior approval of, occupancy agreements with residents entered into in the ordinary course of business of the assisted living facility

3 4 Notice of Lessor's Default Assignor shall cause notice to be given to Assignee of any notice of default by the lessee under any of the Leases, which default is of a nature which would permit such lessee to terminate such lessee's Lease, promptly upon the receipt of notice of such default, but in all events in sufficient time to afford to Assignee an opportunity to cure any such default prior to the lessee under the subject Lease having any right to terminate the Lease by reason of such default

3 5 Assignee and Lenders to be Creditor of Lessee To the extent permitted by law, Assignee and Lenders shall be deemed to be the creditor of each lessee in the Leases in respect of any and all claims for Damages, assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such lessee (without obligation on the part of Assignee or Lenders, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein) Assignor hereby assigns to Assignee for its benefit and the benefit of Lenders any and all Damages and any and all money received in connection with such assignment for the benefit of creditors or in any such bankruptcy, reorganization, insolvency, dissolution or receivership proceedings, with Assignee to receive such Damages and monies and hold them in escrow for the purposes of applying Damages or any money received by Assignee as such creditor in payment of the principal and interest installments secured by or to be paid under the Loan next falling due To the extent permitted by law, Assignor hereby appoints Assignee as its irrevocable attorney-in-fact to appear in any action and/or collect any such money, award or payment

IV. DEFAULTS AND REMEDIES:

4 1 Defaults The occurrence of an Event of Default under the Loan Agreement or any of the other Loan Documents shall constitute an Event of Default hereunder

4 2 Exercise of This Assignment of Leases and Rents

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

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

4 3 Nature of Remedies No delay or omission on the part of Assignee in the exercise of any remedy for an Event of Default shall operate as a waiver thereof. The remedies available to Assignee under this Assignment shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the Note and the other Loan Documents. The said remedies shall be cumulative and concurrent, may be pursued separately, successively or together against Assignor or the Property, or either of them, at the sole discretion of Assignee and may be exercised as often as occasion therefor shall arise.

4 4 Application of Rents Assignee shall have the power to apply the Rents and Damages, in such order as Assignee may determine, to the payment of the indebtedness (in the inverse order of maturity) represented by the Note and the other Loan Documents, including, without limitation, the payment of all advances and expenses incurred by Assignee under the Loan Documents and all expenses for the care and management of the Property, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing real estate and collecting Rents, and the expenses and fees of all attorneys, agents, and servants, which expenses Assignee may deem to be necessary to exercise the powers granted to the Assignee hereunder. The receipt by Assignee of any Rents pursuant to this Assignment following an Event of Default and the exercise of any remedies provided for in the Note or the other Loan Documents shall not cure such Event of Default or affect or prejudice the exercise of such remedies.

4 5 Limitation of Assignee's Obligations Assignee's obligations as to any Rents actually collected shall be discharged by application of such Rents for the purposes described in this Assignment. Assignee and Lenders shall not be liable for uncollected Rents or for any claim for damages or set-offs arising out of Assignee's management of the Property other than for damages arising from Assignee's gross negligence or willful misconduct. Neither Assignee nor Lenders shall be liable to any lessee under the Leases for the return of any security deposit made under any Lease of any portion of the Property unless Assignee shall have received such security deposit from the lessor or such lessee. Neither Assignee nor Lenders shall by reason of this Assignment or the exercise of any right granted herein be obligated to perform any obligation of the lessor under any of the Leases, nor shall Assignee or Lenders be responsible for any act committed by the lessor or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making the Assignee a mortgagee in possession of the Property or any part thereof.

4 6 Reimbursement Assignor shall reimburse, indemnify, and hold Assignee and Lenders harmless for and from expenses, losses, damages, and liabilities which Assignee or Lenders may incur (except for any such expenses, losses, damages and liabilities caused by Assignee's gross negligence or willful misconduct) by reason of this Assignment, or by reason of any of the Leases, or incurred in connection with exercising any of the rights granted in this Assignment. Any and all amounts due to Assignee or Lenders under this Section 4 6 shall be immediately due and payable following written notice to Assignor and shall be added to the principal amount of the Note and secured by this Assignment and the other Loan Documents.

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

V. MISCELLANEOUS

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

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

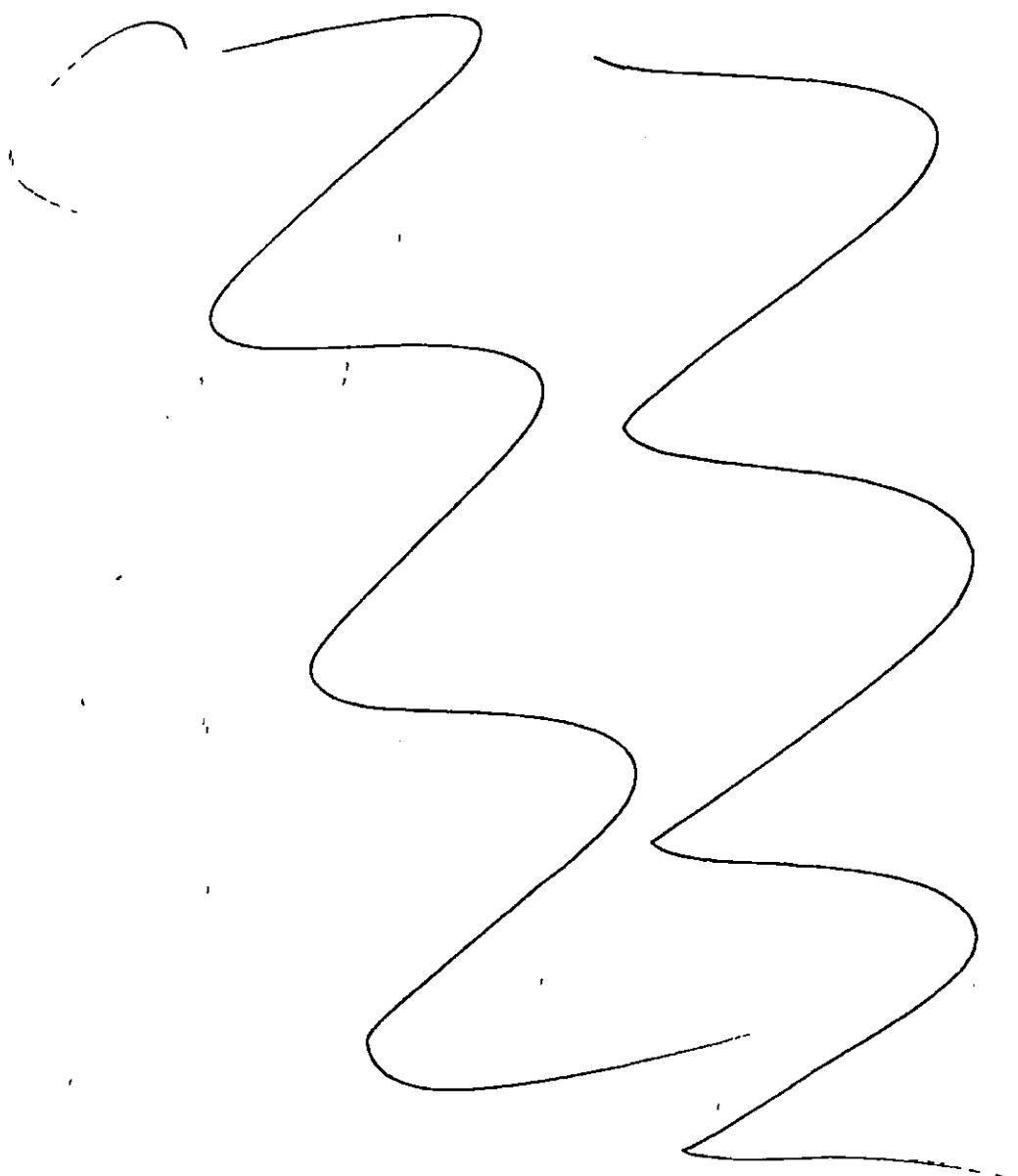
53 Notices Whenever notice may appropriately be given under this Assignment, such notice shall be given in accordance with the provisions for notice as set forth in the Loan Agreement of even date herewith between Assignor, Lenders and Assignee

54 Governing Law This Assignment shall be governed by and construed in accordance with the laws of the State of Ohio

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

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

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

ASSIGNOR.

MALLARD COVE SENIOR DEVELOPMENT,
LLC, a Missouri limited liability company

BY

David A. Smith

David A. Smith
Its Manager

STATE OF MISSOURI
COUNTY OF St Louis

The foregoing instrument was acknowledged before me this 04 day of
April, 2015, by David A Smith, the Manager of Mallard Cove Senior Development,
LLC, a Missouri limited liability company, on behalf of the limited liability company

[NOTARY SEAL]

Katie Lowe
Notary Public

Print Name

My commission expires

Katie Lowe
12/18/18



THIS INSTRUMENT PREPARED BY
AND UPON RECORDING RETURN TO

Dwight L Mixson, Jr
Burr & Forman LLP
420 North 20th Street
Suite 3400
Birmingham, Alabama 35203

EXHIBIT "A"

LEGAL DESCRIPTION

ALL THOSE CERTAIN TRACT(S) OR PARCEL(S) OF LAND SITUATED IN THE CITY OF SHARONVILLE AND TOWNSHIP OF Sycamore, COUNTY OF HAMILTON AND STATE OF OHIO, AND KNOWN AS BEING PARCELS A, B AND C OF CONSOLIDATION PLAT FOR MALLARD COVE SENIOR DEVELOPMENT, LLC, RECORDED AS PLAT BOOK 432 OF MAPS, PAGE 28 AND ALSO RECORDED IN OFFICIAL RECORD 11921, PAGE 1664 OF HAMILTON COUNTY, OHIO RECORDS, IN SECTION 36, TOWN 4, ENTIRE RANGE 1, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGINNING AT AN EXISTING SPIKE AT THE INTERSECTION OF THE CENTERLINE OF MALLARD COVE DRIVE WITH THE CENTERLINE OF LIPPELMAN ROAD,

THENCE ALONG THE CENTERLINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST, 459 63 FEET TO A SET MAG NAIL AND THE REAL PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT,

THENCE CONTINUING ALONG THE CENTERLINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST 170 00 FEET TO A SET MAG NAIL,

THENCE LEAVING THE CENTERLINE OF LIPPELMAN ROAD, NORTH 87°44'00" WEST, 30 00 FEET TO A SET 5/8" IRON PIN AND CAP IN THE WESTERLY RIGHT OF WAY OF LIPPELMAN ROAD,

THENCE ALONG THE WESTERLY LINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST, 30 00 FEET TO A SET 5/8" IRON PIN AND CAP AT THE NORTHEAST CORNER OF THE PROPERTY AS CONVEYED TO AMS REAL ESTATE LLC IN OFFICIAL RECORD 10968, PAGE 968 OF THE HAMILTON COUNTY, OHIO RECORDS, SAID POINT BEING THE CENTERLINE OF CLINTON STREET (AS NOW VACATED),

THENCE ALONG THE NORtherly LINE OF SAID AMS REAL ESTATE TRACT AND THE CENTERLINE OF CLINTON STREET (AS NOW VACATED), NORTH 87°44'00" WEST, 630 12 FEET TO AN EXISTING IRON PIN AND CAP,

THENCE LEAVING THE NORtherly LINE OF SAID AMS REAL ESTATE TRACT AND THE CENTERLINE OF CLINTON STREET (AS NOW VACATED), NORTH 01°31'09" EAST, 629 63 FEET TO THE SOUTHWEST CORNER OF GARDEN PLACE SUBDIVISION AS RECORDED IN PLAT BOOK 325, PAGE 12 OF THE HAMILTON COUNTY, OHIO RECORDS, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN (BENT) WHICH IS 0 96' SOUTH AND 0 17' WEST, THENCE ALONG THE SOUTHERLY LINE OF GARDEN PLACE SUBDIVISION AND ITS EASTERLY EXTENSION, SOUTH 87°44'00" EAST, 430 12 FEET TO A SET 5/8" IRON PIN AND CAP IN THE SOUTHERLY RIGHT OF WAY OF MALLARD COVE DRIVE, SAID POINT BEING THE NORTHWEST CORNER OF THE PROPERTY AS CONVEYED TO RONALD A LIPEZ &

STANLEY CLAYBON IN OFFICIAL RECORD 10494, PAGE 1060 OF THE HAMILTON COUNTY, OHIO RECORDS,

THENCE LEAVING THE SOUTHERLY RIGHT OF WAY OF MALLARD COVE DRIVE, ALONG THE WESTERLY LINE OF SAID LIPEZ & CLAYBON TRACT AND THE WESTERLY LINE OF THE PROPERTY AS CONVEYED TO ANANT P & SWADESH K. SINGH IN OFFICIAL RECORD 10742, PAGE 910 OF THE HAMILTON COUNTY, OHIO RECORDS, SOUTH 01°31'09" WEST, 155 00 FEET TO A SET 5/8" IRON PIN AND CAP,

THENCE CONTINUING ALONG THE WESTERLY LINE OF SAID SINGH TRACT, THE FOLLOWING TWO COURSES AND DISTANCES, SOUTH 24°14'54" WEST, 64 70 FEET TO A SET 5/8" IRON PIN AND CAP AND SOUTH 01°31'09" WEST, 50 00 FEET TO THE SOUTHWEST CORNER OF SAID SINGH TRACT, SAID POINT BEING IN THE NORTHERLY LINE OF THE PROPERTY AS CONVEYED TO DAVID J FRANZ IN OFFICIAL RECORD 11482, PAGE 1733 OF THE HAMILTON COUNTY OHIO, RECORDS AND BEING WITNESSED BY AN EXISTING PIN AND CAP, WHICH IS 0 26 FEET NORTH,

THENCE LEAVING THE WESTERLY LINE OF SAID SINGH TRACT, ALONG THE NORtherLY LINE OF SAID FRANZ TRACT, NORTH 87°44'00" WEST, 25 00 FEET TO THE NORTHWEST CORNER OF SAID FRANZ TRACT, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN AND CAP, WHICH IS 0 26 FEET NORTH AND 0 12 FEET EAST,

THENCE ALONG THE WEST LINE OF SAID FRANZ TRACT AND THE WESTERLY LINE OF THE PROPERTY AS CONVEYED TO BAMK PROPERTIES, LLC IN OFFICIAL RECORD 9195, PAGE 3837 OF THE HAMILTON COUNTY, OHIO RECORDS, SOUTH 01°31'09" WEST, 164 63 FEET TO THE SOUTHWEST CORNER OF THE BAMK TRACT, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN AND CAP, WHICH IS 0 31 FEET SOUTH AND 0 28 FEET WEST, THENCE ALONG THE SOUTHERLY LINE OF BAMK TRACT, SOUTH 87°44'00" EAST, (PASSING A SET 5/8" IRON PIN AND CAP AT 250 00 FEET) 280 00 FEET TO THE PLACE OF BEGINNING, THUS CONTAINING 7 0170 ACRES OF LAND

BEARINGS USED IN THIS LEGAL DESCRIPTION ARE BASED ON RANDOM BEARING SYSTEM RELATIVE TO THE EXISTING DEED OF RECORD AS RECORDED IN OFFICIAL RECORD 10896, PAGE 1238 OF THE HAMILTON COUNTY, OHIO RECORDS

THE ABOVE DESCRIBED REAL ESTATE IS ALL OF THE SAME PREMISES CONVEYED TO MALLARD COVE SENIOR DEVELOPMENT, LLC BY LIMITED WARRANTY DEED FROM NATIONWIDE HEALTH PROPERTIES, INC RECORDED IN OFFICIAL RECORD 10896, PAGE 1238 AND GENERAL WARRANTY DEED FROM BAMK PROPERTIES, LLC RECORDED IN OFFICIAL RECORD 11837, PAGE 990 OF THE HAMILTON COUNTY, OHIO RECORDS, BEING THE RESULT OF A SURVEY AND PLAT DATED JANUARY 5, 2012, MADE BY STEPHEN L CAHILL, PLS, OF ABERCROMBIE & ASSOCIATES, INC., OHIO REGISTERED SURVEYOR NUMBER 7862

TOGETHER WITH, RESERVATION OF EASEMENT AND GRANT OF EASEMENT RECORDED AS OFFICIAL RECORD 7045, PAGE 1408 OF HAMILTON COUNTY, OHIO RECORDS

EXHIBIT E

ASSIGNMENT OF LICENSES, PERMITS AND CONTRACTS

THIS ASSIGNMENT OF LICENSES, PERMITS AND CONTRACTS (this "Assignment") is made as of April 6, 2015, by MALLARD COVE SENIOR DEVELOPMENT, LLC, a Missouri limited liability company (the "Borrower"), whose address is 1 McKnight Place, St Louis, Missouri 63124, Attention David A Smith, to COMMUNITY & SOUTHERN BANK, a Georgia state banking corporation, as administrative agent (together with its successors and assigns, "Administrative Agent"), whose address is 3333 Riverwood Parkway, Suite 350, Atlanta, Georgia 30339, Attention Ms Kelly Harrison

RECITALS:

A Pursuant to a Loan Agreement dated as of the date hereof (the "Loan Agreement") among Borrower, Administrative Agent and the Lenders (as defined therein), Borrower has requested and Lenders have agreed to make, a loan or loans to Borrower in the maximum principal sum of Twenty-Three Million Five Hundred Thousand and No/100 Dollars (\$23,500,000.00). The repayment of the Loan is evidenced by one or more Promissory Notes of even date herewith given to Lenders (such Promissory Notes, whether one or more, together with all extensions, renewals, modifications, consolidations, substitutions, replacements, restatements and increases thereof, is referred to herein collectively as the "Note"), payable, with interest, in accordance with the terms and conditions provided in the Note and Loan Agreement. *Capitalized terms used herein and not defined shall have the meanings set forth in the Loan Agreement.*

B The Loan is to be secured by, among other things, a certain Mortgage and Security Agreement and Fixture Filing (the "Security Instrument"), dated as of the date hereof, which, among other things, grants Administrative Agent a first lien on the real property encumbered thereby (the "Property")

C Lenders are unwilling to make the Loan to Borrower unless Borrower, in the manner hereinafter set forth, assigned to Administrative Agent for its benefit and the benefit of Lenders as additional security for the payment of the Loan and the observance and performance by Borrower of the terms, covenants and conditions of the Note, the Loan Agreement, the Security Instrument and the other Loan Documents to be observed and performed, all of Borrower's right, title and interest in and to all permits, license agreements, operating contracts, business licenses, state health department licenses, food service licenses, licenses to conduct business and assisted living facility licenses (collectively, the "Licenses and Permits"), and all management, service, supply and maintenance contracts and other agreements (collectively, the "Contracts"), and other permits, licenses or contracts of any nature whatsoever now or hereafter obtained or entered into by Borrower with respect to the ownership, occupancy, use, operation, maintenance and administration of the Property or the operation of the assisted living facility to be conducted thereat (the "Other Assigned Licenses and Agreements"), including, without limitation, those documents and agreements described on Schedule A attached hereto and made a part hereof (the Licenses and Permits set forth in Schedule A and the Contracts set forth in Schedule A, together with all of the foregoing Licenses and Permits, Contracts and Other Assigned Licenses and Agreements as generally described in this Section, are referred to collectively as the "Licenses, Permits and Contracts")

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows

1 Assignment of the Licenses, Permits and Contracts As additional collateral security for the Loan and the observance and performance by Borrower of the terms, covenants and conditions of the Note, the Loan Agreement, the Security Instrument and the other Loan Documents on the part of Borrower to be observed or performed, Borrower hereby transfers, sets over and assigns to Administrative Agent for its benefit and the benefit of Lenders all of Borrower's right, title and interest in and to the Licenses, Permits and Contracts Nothing herein shall obligate Administrative Agent to perform any obligations of Borrower pursuant the Licenses, Permits and Contracts unless and until Administrative Agent (or its successor or assign with respect to the Loan) succeeds to Borrower's interest in the Property and then only as to those Licenses, Permits and Contracts that it elects to assume and continue and only as to obligations thereafter accruing Administrative Agent may, upon succeeding to Borrower's interest in the Property, select which of the Licenses, Permits and Contracts it may assume and may terminate or allow the termination of others

2 Borrower's Covenants Borrower hereby covenants with Administrative Agent that during the term of this Assignment, Borrower shall (a) fulfill and perform each and every term, covenant and provision of the Licenses, Permits and Contracts to be fulfilled or performed by Borrower thereunder, if any, (b) in the manner provided for in this Assignment, give prompt notice to Administrative Agent of any notice received by Borrower under any of the Licenses, Permits and Contracts, together with a complete copy of any such notice, (c) enforce, short of termination thereof, the performance and observance of each and every term, covenant and provision of the Licenses, Permits and Contracts to be performed or observed, if any, (d) not assign any of the Licenses, Permits and Contracts, and (e) not terminate or amend any of the terms or provisions of any of the Licenses, Permits and Contracts, except as may be permitted pursuant to the terms of the Licenses, Permits and Contracts, is in the ordinary course of business, and would not violate the Loan Agreement, Security Instrument or other Loan Documents, without the prior written consent of Administrative Agent, which consent may be withheld by Administrative Agent in Administrative Agent's sole discretion In the event that Borrower has terminated any assigned Contract set forth in Schedule A, Borrower agrees to enter into another Contract containing terms and conditions no less favorable to Borrower than the terminated Contract unless Administrative Agent has agreed in writing that such Contract need not be replaced and Borrower shall furnish a copy thereof to Administrative Agent, and the same shall automatically and without further action be deemed assigned hereunder Borrower shall notify Administrative Agent in the event that Borrower does not replace the terminated Contract and give the reasons therefor

3 Governing Law This Assignment shall be deemed to be governed, construed, applied and enforced in accordance with the laws of the State of Georgia and the applicable laws of the United States of America

4 Notices All notices or other written communications hereunder shall be deemed to have been properly given and become effective as provided in the Security Instrument

5 No Oral Change This Assignment, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Administrative Agent, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought

6 Liability, Benefit If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall be binding upon Borrower and Administrative Agent and their respective successors and assigns forever and shall inure to the benefit of Administrative Agent and Lenders and their respective successors and assigns forever

7 Inapplicable Provisions If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision

8 Headings, etc The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof

9 Duplicate Originals, Counterparts This Assignment may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder

10 Number and Gender Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa

11 Miscellaneous Wherever, pursuant to this Assignment, it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, legal fees and disbursements of Administrative Agent, whether for retained firms, the reimbursement for the expenses of in-house staff or otherwise

[Remainder of this page is intentionally left blank]

IN WITNESS WHEREOF Borrower has executed this Assignment as of the date first written above

BORROWER.

**MALLARD COVE SENIOR DEVELOPMENT,
LLC, a Missouri limited liability company**

BY David A. Smith
David A. Smith
Its Manager

SCHEDULE A

Description of Certain Licenses, Permits and Contracts

The interest of the Borrower, if any, in and to any of the following

Licenses and Permits:

Residential care facility license issued by the State of Ohio Department of Health dated effective July 1, 2011

Contracts:

N/A

EXHIBIT F-1

File Number: 1306272470426

Date Filed: 6/26/2013 10:24:00 AM

Jason Kander
Secretary of State

ORI-06272013-0119 State of Missouri

No of Pages 8 Pages



UCC1

A. NAME & PHONE OF CONTACT AT FILER (optional)

Pamela W. Griffith (205) 458-5273

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Dwight L. Mixson, Jr.
BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

| | | | | | |
|--|---|--|---|---|-------------------------------|
| 1a. ORGANIZATION'S NAME Mallard Cove Senior Development, LLC | | FIRST NAME | MIDDLE NAME | | SUFFIX |
| OR 1b. INDIVIDUAL'S LAST NAME | | | | | |
| 1c. MAILING ADDRESS 1 McKnight Place | | CITY St. Louis | STATE MO | POSTAL CODE 63124 | COUNTRY USA |
| 1d. | ADD'L INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION LLC | 1f. JURISDICTION OF ORGANIZATION Missouri | 1g. ORGANIZATIONAL ID #, if any MO LC879640 | <input type="checkbox"/> NONE |

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

| | | | | | |
|-------------------------------|---|--------------------------|----------------------------------|---------------------------------|-------------------------------|
| 2a. ORGANIZATION'S NAME | | FIRST NAME | MIDDLE NAME | | SUFFIX |
| OR 2b. INDIVIDUAL'S LAST NAME | | | | | |
| 2c. MAILING ADDRESS | | CITY | STATE | POSTAL CODE | COUNTRY |
| 2d. | ADD'L INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. JURISDICTION OF ORGANIZATION | 2g. ORGANIZATIONAL ID #, if any | <input type="checkbox"/> NONE |

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR(S)) - Insert only one secured party name (3a or 3b)

| | | | | | |
|--|--|------------------------|--------------------|-----------------------------|-----------------------|
| 3a. ORGANIZATION'S NAME Community & Southern Bank, as Administrative Agent | | FIRST NAME | MIDDLE NAME | | SUFFIX |
| OR 3b. INDIVIDUAL'S LAST NAME | | | | | |
| 3c. MAILING ADDRESS 3333 Riverwood Parkway, Suite 350 | | CITY Atlanta | STATE GA | POSTAL CODE 30339 | COUNTRY USA |

4. This FINANCING STATEMENT covers the following collateral:

The collateral is more fully described in Exhibit B attached hereto and made a part hereof.

The real estate referred to in Exhibit B is more fully described in Exhibit A attached hereto and made a part hereof.

| | | | | | | |
|---|--|--|--|---------------------------------------|-----------------------------------|---|
| 5. ALTERNATIVE DESIGNATION (if applicable): | <input type="checkbox"/> LESSEE/LESSOR | <input type="checkbox"/> CONSIGNEE/CONSIGNOR | <input type="checkbox"/> BAILEE/BAILOR | <input type="checkbox"/> SELLER/BUYER | <input type="checkbox"/> AG. LIEN | <input type="checkbox"/> NON-UCC FILING |
|---|--|--|--|---------------------------------------|-----------------------------------|---|

| | | | | | |
|--|--|--|-------------|----------|----------|
| 6. This FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum | <input type="checkbox"/> If applicable | 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) | All Debtors | Debtor 1 | Debtor 2 |
|--|--|--|-------------|----------|----------|

8. OPTIONAL FILER REFERENCE DATA

Filed with: Missouri Secretary of State

23775-16

EXHIBIT A

ALL THOSE CERTAIN TRACT(S) OR PARCEL(S) OF LAND SITUATED IN THE CITY OF SHARONVILLE AND TOWNSHIP OF SYCAMORE, COUNTY OF HAMILTON AND STATE OF OHIO, AND KNOWN AS BEING PARCELS A, B AND C OF CONSOLIDATION PLAT FOR MALLARD COVE SENIOR DEVELOPMENT, LLC, RECORDED AS PLAT BOOK 432 OF MAPS, PAGE 28 AND ALSO RECORDED IN OFFICIAL RECORD 11921; PAGE 1664 OF HAMILTON COUNTY, OHIO RECORDS, IN SECTION 36, TOWN 4, ENTIRE RANGE 1, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN EXISTING SPIKE AT THE INTERSECTION OF THE CENTERLINE OF MALLARD COVE DRIVE WITH THE CENTERLINE OF LIPPELMAN ROAD;

THENCE ALONG THE CENTERLINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST, 459.63 FEET TO A SET MAG NAIL AND THE REAL PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE CONTINUING ALONG THE CENTERLINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST 170.00 FEET TO A SET MAG NAIL;

THENCE LEAVING THE CENTERLINE OF LIPPELMAN ROAD, NORTH 87°44'00" WEST, 30.00 FEET TO A SET 5/8" IRON PIN AND CAP IN THE WESTERLY RIGHT OF WAY OF LIPPELMAN ROAD;

THENCE ALONG THE WESTERLY LINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST, 30.00 FEET TO A SET 5/8" IRON PIN AND CAP AT THE NORTHEAST CORNER OF THE PROPERTY AS CONVEYED TO AMS REAL ESTATE LLC IN OFFICIAL RECORD 10968, PAGE 968 OF THE HAMILTON COUNTY, OHIO RECORDS, SAID POINT BEING THE CENTERLINE OF CLINTON STREET (AS NOW VACATED);

THENCE ALONG THE NORtherly LINE OF SAID AMS REAL ESTATE TRACT AND THE CENTERLINE OF CLINTON STREET (AS NOW VACATED), NORTH 87°44'00" WEST, 630.12 FEET TO AN EXISTING IRON PIN AND CAP;

THENCE LEAVING THE NORtherly LINE OF SAID AMS REAL ESTATE TRACT AND THE CENTERLINE OF CLINTON STREET (AS NOW VACATED), NORTH 01°31'09" EAST, 629.63 FEET TO THE SOUTHWEST CORNER OF GARDEN PLACE SUBDIVISION AS RECORDED IN PLAT BOOK 325, PAGE 12 OF THE HAMILTON COUNTY, OHIO RECORDS, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN (BENT) WHICH IS 0.96' SOUTH AND 0.17' WEST; THENCE ALONG THE SOUTHERLY LINE OF GARDEN PLACE SUBDIVISION AND ITS EASTERN EXTENSION, SOUTH 87°44'00" EAST, 430.12 FEET TO A SET 5/8" IRON PIN AND CAP IN THE SOUTHERLY RIGHT OF WAY OF MALLARD COVE DRIVE, SAID POINT BEING THE NORTHWEST CORNER OF THE PROPERTY AS CONVEYED TO RONALD A. LIPEZ & STANLEY CLAYBON IN OFFICIAL RECORD 10494, PAGE 1060 OF THE HAMILTON COUNTY, OHIO RECORDS;

THENCE LEAVING THE SOUTHERLY RIGHT OF WAY OF MALLARD COVE DRIVE, ALONG THE WESTERLY LINE OF SAID LIPEZ & CLAYBON TRACT AND THE WESTERLY LINE OF THE PROPERTY AS CONVEYED TO ANANT P. & SWADESH K. SINGH IN OFFICIAL RECORD

10742, PAGE 910 OF THE HAMILTON COUNTY, OHIO RECORDS, SOUTH 01°31'09" WEST, 155.00 FEET TO A SET 5/8" IRON PIN AND CAP;

THENCE CONTINUING ALONG THE WESTERLY LINE OF SAID SINGH TRACT, THE FOLLOWING TWO COURSES AND DISTANCES, SOUTH 24°14'54" WEST, 64.70 FEET TO A SET 5/8" IRON PIN AND CAP AND SOUTH 01°31'09" WEST, 50.00 FEET TO THE SOUTHWEST CORNER OF SAID SINGH TRACT, SAID POINT BEING IN THE NORTHERLY LINE OF THE PROPERTY AS CONVEYED TO DAVID J. FRANZ IN OFFICIAL RECORD 11482, PAGE 1733 OF THE HAMILTON COUNTY OHIO, RECORDS AND BEING WITNESSED BY AN EXISTING PIN AND CAP, WHICH IS 0.26 FEET NORTH;

THENCE LEAVING THE WESTERLY LINE OF SAID SINGH TRACT, ALONG THE NORTHERLY LINE OF SAID FRANZ TRACT, NORTH 87°44'00" WEST, 25.00 FEET TO THE NORTHWEST CORNER OF SAID FRANZ TRACT, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN AND CAP, WHICH IS 0.26 FEET NORTH AND 0.12 FEET EAST;

THENCE ALONG THE WEST LINE OF SAID FRANZ TRACT AND THE WESTERLY LINE OF THE PROPERTY AS CONVEYED TO BAMK PROPERTIES, LLC IN OFFICIAL RECORD 9195, PAGE 3837 OF THE HAMILTON COUNTY, OHIO RECORDS, SOUTH 01°31'09" WEST, 164.63 FEET TO THE SOUTHWEST CORNER OF THE BAMK TRACT, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN AND CAP, WHICH IS 0.31 FEET SOUTH AND 0.28 FEET WEST; THENCE ALONG THE SOUTHERLY LINE OF BAMK TRACT, SOUTH 87°44'00" EAST, (PASSING A SET 5/8" IRON PIN AND CAP AT 250.00 FEET) 280.00 FEET TO THE PLACE OF BEGINNING, THUS CONTAINING 7.0170 ACRES OF LAND.

BEARINGS USED IN THIS LEGAL DESCRIPTION ARE BASED ON RANDOM BEARING SYSTEM RELATIVE TO THE EXISTING DEED OF RECORD AS RECORDED IN OFFICIAL RECORD 10896, PAGE 1238 OF THE HAMILTON COUNTY, OHIO RECORDS.

THE ABOVE DESCRIBED REAL ESTATE IS ALL OF THE SAME PREMISES CONVEYED TO MALLARD COVE SENIOR DEVELOPMENT, LLC BY LIMITED WARRANTY DEED FROM NATIONWIDE HEALTH PROPERTIES, INC. RECORDED IN OFFICIAL RECORD 10896, PAGE 1238 AND GENERAL WARRANTY DEED FROM BAMK PROPERTIES, LLC RECORDED IN OFFICIAL RECORD 11837, PAGE 990 OF THE HAMILTON COUNTY, OHIO RECORDS, BEING THE RESULT OF A SURVEY AND PLAT DATED JANUARY 5, 2012, MADE BY STEPHEN L. CAHILL, PLS, OF ABERCROMBIE & ASSOCIATES, INC., OHIO REGISTERED SURVEYOR NUMBER 7862.

TOGETHER WITH, RESERVATION OF EASEMENT AND GRANT OF EASEMENT RECORDED AS OFFICIAL RECORD 7045, PAGE 1408 OF HAMILTON COUNTY, OHIO RECORDS.

EXHIBIT B
TO UCC FINANCING STATEMENT
BY AND BETWEEN
MALLARD COVE SENIOR DEVELOPMENT, LLC (DEBTOR)
AND
COMMUNITY & SOUTHERN BANK,
AS ADMINISTRATIVE AGENT (SECURED PARTY)

COLLATERAL COVERED. This Financing Statement covers all of the Debtor's present and future right, title and interest in and to the following property (which property is hereinafter referred to collectively as the "Property"):

- (a) the Land;
- (b) all Appurtenant Rights;
- (c) all Equipment;
- (d) all Improvements;
- (e) all Fixtures;
- (f) all Accounts;
- (g) all Deposit Accounts;
- (h) all Contracts;
- (i) all General Intangibles;
- (j) all Permits (to the extent assignable);
- (k) all Money;
- (l) all Instruments;
- (m) all Inventory;
- (n) all Reimbursement Contracts;
- (o) all Rents;
- (p) all Personality;
- (q) all Leases;
- (r) all Chattel Paper;
- (s) all Supporting Obligations;
- (t) all Investment Property;
- (u) all Proceeds;
- (v) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personality or any other part of the Property entered into by Debtor now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (w) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company;
- (x) all names under or by which any of the above Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Property; and
- (y) all renewals, replacements and Proceeds of any of the foregoing and any substitutions therefor.

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

"Accounts" has the meaning given such term in the UCC, and includes, without limitation, any rights of Debtor arising from the operation of the Facility or other parts of the Property 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 or other Property (ii) all moneys and accounts, if any, (iii) all rights to payment from state or federal programs, boards, bureaus or agencies, and rights to payment from residents, private insurers, and others arising from the operation of the Facility, including rights to payment pursuant to Reimbursement Contracts, (iv) receivables arising out of the use of a credit or charge card or information contained on or for use with the card, (v) any and all "health-care insurance receivables" (as defined in the UCC), (vi) Supporting Obligations, letter-of-credit rights and letters of credit given by any Person with respect to any of the foregoing, and (vii) all books and records in whatever media (paper, electronic or otherwise) recorded or stored, with respect to any or all of the foregoing and all equipment and general intangibles necessary or beneficial to retain, access and/or process the information contained in those books and records. Accounts shall include the Proceeds thereof.

"Appurtenant Rights" means all air rights, development rights, zoning rights, easements, rights-of-way, strips and gores of land, vaults, streets, roads, alleys, tenements, passageways, 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.

"Chattel Paper" has the meaning given such term in the UCC, and includes, without limitation, a record or records (including, without limitation, electronic chattel paper) which evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, or a lease of specific goods; all Supporting Obligations with respect thereto; any returned, rejected or repossessed goods and software covered by any such record or records and all proceeds (in any form including, without limitation, accounts, contract rights, documents, chattel paper, instruments and general intangibles) of such returned, rejected or repossessed goods; and all proceeds (cash proceeds and noncash proceeds) of the foregoing.

"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 Debtor with respect to the acquisition, construction, renovation, expansion, ownership, occupancy, use, operation, maintenance and administration of the Facility and/or the Property, including, without limitation, (i) any and all contracts, authorizations, agreements and/or consents executed by, or on behalf of any resident or other Person seeking services from Debtor pursuant to which Debtor provides or furnishes assisted living or other 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 Debtor and any resident of the Facility giving the resident certain rights of occupancy in the Facility and providing for certain services to such resident.

"Deposit Accounts" has the meaning given such term in the UCC.

"Equipment" has the meaning given such term in the UCC, and includes, without limitation, all beds, linen, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, rehabilitation

equipment, restaurant and kitchen equipment, and other fixtures and equipment of Debtor (including, without limitation, embedded software) located on, attached to or used or useful in connection with any of the 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 or other Property and not owned by Debtor, the Equipment shall include the leasehold interest only of Debtor together with any options to purchase any of said items and any additional or greater rights with respect to such items which Debtor may hereafter acquire.

"Facility" means the senior housing facility consisting of an assisted living facility and memory care facility, located on the Land, as any of the same may from time to time exist, together with any other general or specialized care facilities, if any, now or hereafter operated on the Land.

"Fixtures" means all property 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.

"General Intangibles" has the meaning given such term in the UCC, and includes, without limitation, all intangible personal property of Debtor arising out of or connected with the 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, commercial tort claims, other claims (including without limitation all claims for income tax and other refunds), payment intangibles and Supporting Obligations.

"Impositions" means (i) water and sewer charges which may be levied on all or any part of the Property, (ii) the premiums for fire and other hazard insurance, business interruption insurance and such other insurance as may be required, (iii) the Taxes, and (iv) amounts for other charges and expenses deemed necessary to protect the Property and to prevent the imposition of liens on the Property.

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

"Instruments" has the meaning given such term in the UCC, and includes, without limitation, all instruments, Chattel Paper, documents or other writings obtained by Debtor from or in connection with the construction and operation of the Property or the operation of the Facility (including without limitation, all ledger sheets, computer records and printouts, data bases, programs, books of account, software, trademarks or trade names, utility contracts, maintenance and service contracts and files of Debtor relating thereto).

"Inventory" means all inventories of food, beverages and other comestibles owned and held by Debtor for sale or use at or from the Property or the Facility, and soap, paper supplies, medical supplies, drugs and all other such goods, wares and merchandise held by Debtor (including, without limitation, embedded software) for sale to or for consumption by residents or guests of the Property or the Facility and all such other goods returned to or repossessed by Debtor.

"Investment Property" has the meaning given such term in the UCC, and includes, without limitation, a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account, and all proceeds (cash proceeds and noncash proceeds) of, and Supporting Obligations with respect to, the foregoing.

"Land" means the land described in Exhibit "A" attached hereto and incorporated herein.

"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 Property and/or the Facility, or any portion of the Property and/or the Facility and all modifications, extensions or renewals thereof.

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

"Money" means all monies, cash, rights to Deposit Accounts, or other items of legal tender obtained from or for use in connection with the operation of the Property or the Facility.

"Permits" means all licenses, permits and certificates used or necessary in connection with the construction, ownership, operation, use or occupancy of the Property and/or the Facility, including, without limitation, site work permits, building permits, business licenses, state health department licenses, food service licenses, licenses to conduct business, assisted living facility licenses, certificates of need and all such other permits, licenses and rights, obtained from any governmental, quasi-governmental or private person or entity whatsoever concerning ownership, operation, use or occupancy.

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

"Personalty" means all Equipment, Inventory, General Intangibles 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, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) 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 and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental Permits relating to any activities on the Land.

"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 immovable, 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 Property.

"Reimbursement Contracts" means all third-party reimbursement contracts for the Facility which are now or hereafter in effect with respect to residents qualifying for coverage under the same, including federal or state reimbursement programs, 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.

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

"Supporting Obligation" has the meaning given such term in the UCC, and includes, without limitation, a letter-of-credit right, secondary obligation, or obligation of a secondary obligor, or secondary obligation that supports the payment or performance of an Account, Chattel Paper, a document, a General Intangible, an Instrument, or Investment Property.

"Taxes" means all taxes, assessments, vault rentals 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.

"UCC" has the meaning given to that term in the Uniform Commercial Code as in effect from time to time in the State of Ohio.

EXHIBIT F-2

File Number: 20230713001856980

Date Filed: 7/12/2023 8:00 AM

John R. Ashcroft
Secretary of State

ORI-07122023-2698 State of Missouri

No of Pages 8 Pages



UCC1

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

| |
|--|
| A. NAME & PHONE OF CONTACT AT FILER (optional) |
| B. E-MAIL CONTACT AT FILER (optional) |
| C. SEND ACKNOWLEDGMENT TO: (Name and Address) Foot & Associates PLLC 260 Horton Lane P.O. Box 638 Southold, NY 11971 |

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

| | | | | |
|--|--------------------------|---------------------|-------------------------------|------------|
| 1a. ORGANIZATION'S NAME Mallard Cove Senior Development, LLC | | | | |
| OR | 1b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX |
| | | | | |
| 1c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY |
| 1410 Mallard Cove Dr. | Cincinnati | OH | 45246 | USA |

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

| | | | | |
|-------------------------|--------------------------|---------------------|-------------------------------|---------|
| 2a. ORGANIZATION'S NAME | | | | |
| OR | 2b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX |
| | | | | |
| 2c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY |
| | | | | |

| | | | | |
|---|--------------------------|---------------------|-------------------------------|------------|
| 3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b) | | | | |
| 3a. ORGANIZATION'S NAME | | | | |
| WM Capital Partners 90, LLC | | | | |
| OR | 3b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX |
| | | | | |
| 3c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY |
| 500 W 5th Street, Suite 1010 | Austin | TX | 78701 | USA |

4. COLLATERAL: This financing statement covers the following collateral:

The collateral is more fully described in Exhibit B attached hereto and made a part hereof. The real estate referred to in Exhibit B is more fully described in Exhibit A attached hereto and made a part hereof

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, Item 17 and Instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility Agricultural Lien Non-UCC Filing

6b. Check only if applicable and check only one box:

Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licensor

7. ALTERNATIVE DESIGNATION (if applicable):

Missouri SOS 23775-51

8. OPTIONAL FILER REFERENCE DATA:

Missouri SOS 23775-51

International Association of Commercial Administrators (IACA)

EXHIBIT A
TO UCC FINANCING STATEMENT
BY AND BETWEEN
MALLARD COVE SENIOR DEVELOPMENT, LLC (DEBTOR)
AND
WM CAPITAL PARTNERS 90, LLC (SECURED PARTY)

ALL THOSE CERTAIN TRACT(S) OR PARCEL(S) OF LAND SITUATED IN THE CITY OF SHARONVILLE AND TOWNSHIP OF Sycamore, COUNTY OF HAMILTON AND STATE OF OHIO, AND KNOWN AS BEING PARCELS A, B AND C OF CONSOLIDATION PLAT FOR MALLARD COVE SENIOR DEVELOPMENT, LLC, RECORDED AS PLAT BOOK 432 OF MAPS, PAGE 28 AND ALSO RECORDED IN OFFICIAL RECORD 11921, PAGE 1664 OF HAMILTON COUNTY, OHIO RECORDS, IN SECTION 36, TOWN 4, ENTIRE RANGE 1, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGINNING AT AN EXISTING SPIKE AT THE INTERSECTION OF THE CENTERLINE OF MALLARD COVE DRIVE WITH THE CENTERLINE OF LIPPELMAN ROAD,

THENCE ALONG THE CENTERLINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST, 459 63 FEET TO A SET MAG NAIL AND THE REAL PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT,

THENCE CONTINUING ALONG THE CENTERLINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST 170 00 FEET TO A SET MAG NAIL,

THENCE LEAVING THE CENTERLINE OF LIPPELMAN ROAD, NORTH 87°44'00" WEST, 30 00 FEET TO A SET 5/8" IRON PIN AND CAP IN THE WESTERLY RIGHT OF WAY OF LIPPELMAN ROAD,

THENCE ALONG THE WESTERLY LINE OF LIPPELMAN ROAD, SOUTH 01°31'09" WEST, 30 00 FEET TO A SET 5/8" IRON PIN AND CAP AT THE NORTHEAST CORNER OF THE PROPERTY AS CONVEYED TO AMS REAL ESTATE LLC IN OFFICIAL RECORD 10968, PAGE 968 OF THE HAMILTON COUNTY, OHIO RECORDS, SAID POINT BEING THE CENTERLINE OF CLINTON STREET (AS NOW VACATED),

THENCE ALONG THE NORTHERLY LINE OF SAID AMS REAL ESTATE TRACT AND THE CENTERLINE OF CLINTON STREET (AS NOW VACATED), NORTH 87°44'00" WEST, 630 12 FEET TO AN EXISTING IRON PIN AND CAP,

THENCE LEAVING THE NORTHERLY LINE OF SAID AMS REAL ESTATE TRACT AND THE CENTERLINE OF CLINTON STREET (AS NOW VACATED), NORTH 01°31'09" EAST, 629 63 FEET TO THE SOUTHWEST CORNER OF GARDEN PLACE SUBDIVISION AS RECORDED IN PLAT BOOK 325, PAGE 12 OF THE HAMILTON COUNTY, OHIO RECORDS, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN (BENT) WHICH IS 0 96' SOUTH AND 0 17' WEST, THENCE ALONG THE SOUTHERLY LINE OF GARDEN PLACE SUBDIVISION AND ITS EASTERN EXTENSION, SOUTH 87°44'00" EAST, 430 12 FEET TO A SET 5/8" IRON PIN AND CAP IN THE SOUTHERLY RIGHT OF WAY OF MALLARD COVE DRIVE, SAID POINT BEING THE NORTHWEST CORNER OF THE PROPERTY AS CONVEYED TO RONALD A LIPEZ &

STANLEY CLAYBON IN OFFICIAL RECORD 10494, PAGE 1060 OF THE HAMILTON COUNTY, OHIO RECORDS.

THENCE LEAVING THE SOUTHERLY RIGHT OF WAY OF MALLARD COVE DRIVE, ALONG THE WESTERLY LINE OF SAID LIPEZ & CLAYBON TRACT AND THE WESTERLY LINE OF THE PROPERTY AS CONVEYED TO ANANT P & SWADESH K 'SINGH IN OFFICIAL RECORD 10742, PAGE 910 OF THE HAMILTON COUNTY, OHIO RECORDS, SOUTH 01°31'09" WEST, 155 00 FEET TO A SET 5/8" IRON PIN AND CAP,

THENCE CONTINUING ALONG THE WESTERLY LINE OF SAID SINGH TRACT, THE FOLLOWING TWO COURSES AND DISTANCES, SOUTH 24°14'54" WEST, 64 70 FEET TO A SET 5/8" IRON PIN AND CAP AND SOUTH 01°31'09" WEST, 50 00 FEET TO THE SOUTHWEST CORNER OF SAID SINGH TRACT, SAID POINT BEING IN THE NORTHERLY LINE OF THE PROPERTY AS CONVEYED TO DAVID J FRANZ IN OFFICIAL RECORD 11482, PAGE 1733 OF THE HAMILTON COUNTY OHIO, RECORDS AND BEING WITNESSED BY AN EXISTING PIN AND CAP, WHICH IS 0 26 FEET NORTH,

THENCE LEAVING THE WESTERLY LINE OF SAID SINGH TRACT, ALONG THE NORTHERLY LINE OF SAID FRANZ TRACT, NORTH 87°44'00" WEST, 25 00 FEET TO THE NORTHWEST CORNER OF SAID FRANZ TRACT, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN AND CAP, WHICH IS 0 26 FEET NORTH AND 0 12 FEET EAST,

THENCE ALONG THE WEST LINE OF SAID FRANZ TRACT AND THE WESTERLY LINE OF THE PROPERTY AS CONVEYED TO BAMP PROPERTIES, LLC IN OFFICIAL RECORD 9195, PAGE 3837 OF THE HAMILTON COUNTY, OHIO RECORDS, SOUTH 01°31'09" WEST, 164 63 FEET TO THE SOUTHWEST CORNER OF THE BAMP TRACT, SAID POINT BEING WITNESSED BY AN EXISTING IRON PIN AND CAP, WHICH IS 0 31 FEET SOUTH AND 0 28 FEET WEST, THENCE ALONG THE SOUTHERLY LINE OF BAMP TRACT, SOUTH 87°44'00" EAST, (PASSING A SET 5/8" IRON PIN AND CAP AT 250 00 FEET) 280 00 FEET TO THE PLACE OF BEGINNING, THUS CONTAINING 7 0170 ACRES OF LAND

BEARINGS USED IN THIS LEGAL DESCRIPTION ARE BASED ON RANDOM BEARING SYSTEM RELATIVE TO THE EXISTING DEED OF RECORD AS RECORDED IN OFFICIAL RECORD 10896, PAGE 1238 OF THE HAMILTON COUNTY, OHIO RECORDS

THE ABOVE DESCRIBED REAL ESTATE IS ALL OF THE SAME PREMISES CONVEYED TO MALLARD COVE SENIOR DEVELOPMENT, LLC BY LIMITED WARRANTY DEED FROM NATIONWIDE HEALTH PROPERTIES, INC RECORDED IN OFFICIAL RECORD 10896, PAGE 1238 AND GENERAL WARRANTY DEED FROM BAMP PROPERTIES, LLC RECORDED IN OFFICIAL RECORD 11837, PAGE 990 OF THE HAMILTON COUNTY, OHIO RECORDS, BEING THE RESULT OF A SURVEY AND PLAT DATED JANUARY 5, 2012, MADE BY STEPHEN L CAHILL, PLS, OF ABERCROMBIE & ASSOCIATES, INC., OHIO REGISTERED SURVEYOR NUMBER 7862

TOGETHER WITH, RESERVATION OF EASEMENT AND GRANT OF EASEMENT RECORDED AS OFFICIAL RECORD 7045, PAGE 1408 OF HAMILTON COUNTY, OHIO RECORDS

EXHIBIT B
TO UCC FINANCING STATEMENT
BY AND BETWEEN
MALLARD COVE SENIOR DEVELOPMENT, LLC (DEBTOR)
AND
WM CAPITAL PARTNERS 90, LLC (SECURED PARTY)

COLLATERAL COVERED This Financing Statement covers all of the Debtor's present and future right, title and interest in and to the following property (which property is hereinafter referred to collectively as the "Property")

- (a) the Land,
- (b) all Appurtenant Rights,
- (c) all Equipment,
- (d) all Improvements,
- (e) all Fixtures,
- (f) all Accounts,
- (g) all Deposit Accounts,
- (h) all Contracts,
- (i) all General Intangibles,
- (j) all Permits (to the extent assignable),
- (k) all Money,
- (l) all Instruments,
- (m) all Inventory,
- (n) all Reimbursement Contracts,
- (o) all Rents,
- (p) all Personality,
- (q) all Leases,
- (r) all Chattel Paper,
- (s) all Supporting Obligations,
- (t) all Investment Property,
- (u) all Proceeds,
- (v) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personality or any other part of the Property entered into by Debtor now or in the future, including cash or securities deposited to secure performance by parties of their obligations,
- (w) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company,
- (x) all names under or by which any of the above Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Property, and
- (y) all renewals, replacements and Proceeds of any of the foregoing and any substitutions therefor

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

"Accounts" has the meaning given such term in the UCC, and includes, without limitation, any rights of Debtor arising from the operation of the Facility or other parts of the Property 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 or other Property (ii) all moneys and accounts, if any, (iii) all rights to payment from state or federal programs; boards, bureaus or agencies, and rights to payment from residents, private insurers, and others arising from the operation of the Facility, including rights to payment pursuant to Reimbursement Contracts, (iv) receivables arising out of the use of a credit or charge card or information contained on or for use with the card, (v) any and all "health-care insurance receivables" (as defined in the UCC), (vi) Supporting Obligations, letter-of-credit rights and letters of credit given by any Person with respect to any of the foregoing, and (vn) all books and records in whatever media (paper, electronic or otherwise) recorded or stored, with respect to any or all of the foregoing and all equipment and general intangibles necessary or beneficial to retain, access and/or process the information contained in those books and records. Accounts shall include the Proceeds thereof.

"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.

"Chattel Paper" has the meaning given such term in the UCC, and includes, without limitation, a record or records (including, without limitation, electronic chattel paper) which evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, or a lease of specific goods, all Supporting Obligations with respect thereto, any returned, rejected or repossessioned goods and software covered by any such record or records and all proceeds (in any form including, without limitation, accounts, contract rights, documents, chattel paper, instruments and general intangibles) of such returned, rejected or repossessioned goods, and all proceeds (cash proceeds and noncash proceeds) of the foregoing.

"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 Debtor with respect to the acquisition, construction, renovation, expansion, ownership, occupancy, use, operation, maintenance and administration of the Facility and/or the Property, including, without limitation, (i) any and all contracts, authorizations, agreements and/or consents executed by, or on behalf of any resident or other Person seeking services from Debtor pursuant to which Debtor provides or furnishes assisted living or other 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 Debtor and any resident of the Facility giving the resident certain rights of occupancy in the Facility and providing for certain services to such resident.

"Deposit Accounts" has the meaning given such term in the UCC.

"Equipment" has the meaning given such term in the UCC, and includes, without limitation, all beds, linen, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, rehabilitation

equipment, restaurant and kitchen equipment, and other fixtures and equipment of Debtor (including, without limitation, embedded software) located on, attached to or used or useful in connection with any of the 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 or other Property and not owned by Debtor, the Equipment shall include the leasehold interest only of Debtor together with any options to purchase any of said items and any additional or greater rights with respect to such items which Debtor may hereafter acquire

"Facility" means the senior housing facility consisting of an assisted living facility and memory care facility, located on the Land, as any of the same may from time to time exist, together with any other general or specialized care facilities, if any, now or hereafter operated on the Land

"Fixtures" means all property 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

"General Intangibles" has the meaning given such term in the UCC, and includes, without limitation, all intangible personal property of Debtor arising out of or connected with the 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, commercial tort claims, other claims (including without limitation all claims for income tax and other refunds), payment intangibles and Supporting Obligations

"Impositions" means (i) water and sewer charges which may be levied on all or any part of the Property, (ii) the premiums for fire and other hazard insurance, business interruption insurance and such other insurance as may be required, (iii) the Taxes, and (iv) amounts for other charges and expenses deemed necessary to protect the Property and to prevent the imposition of liens on the Property

"Improvements" means all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including but not limited to, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatuses which are or shall be attached to the Land or said buildings, structures or improvements

"Instruments" has the meaning given such term in the UCC, and includes, without limitation, all instruments, Chattel Paper, documents or other writings obtained by Debtor from or in connection with the construction and operation of the Property or the operation of the Facility (including without limitation, all ledger sheets, computer records and printouts, data bases, programs, books of account, software, trademarks or trade names, utility contracts, maintenance and service contracts and files of Debtor relating thereto)

"Inventory" means all inventories of food, beverages and other comestibles owned and held by Debtor for sale or use at or from the Property or the Facility, and soap, paper supplies, medical supplies, drugs and all other such goods, wares and merchandise held by Debtor (including, without limitation, embedded software) for sale to or for consumption by residents or guests of the Property or the Facility and all such other goods returned to or repossessed by Debtor

"Investment Property" has the meaning given such term in the UCC, and includes, without limitation, a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account, and all proceeds (cash proceeds and noncash proceeds) of, and Supporting Obligations with respect to, the foregoing

"Land" means the land described in Exhibit "A" attached hereto and incorporated herein

"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 Property and/or the Facility, or any portion of the Property and/or the Facility and all modifications, extensions or renewals thereof

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

"Money" means all monies, cash, rights to Deposit Accounts, or other items of legal tender obtained from or for use in connection with the operation of the Property or the Facility

"Permits" means all licenses, permits and certificates used or necessary in connection with the construction, ownership, operation, use or occupancy of the Property and/or the Facility, including, without limitation, site work permits, building permits, business licenses, state health department licenses, food service licenses, licenses to conduct business, assisted living facility licenses, certificates of need and all such other permits, licenses and rights, obtained from any governmental, quasi-governmental or private person or entity whatsoever concerning ownership, operation, use or occupancy

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

"Personality" means all Equipment, Inventory, General Intangibles 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, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures) 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 and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental Permits relating to any activities on the Land

"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 immovable, 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 Property

"Reimbursement Contracts" means all third-party reimbursement contracts for the Facility which are now or hereafter in effect with respect to residents qualifying for coverage under the same, including federal or state reimbursement programs, 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

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

"Supporting Obligation" has the meaning given such term in the UCC, and includes, without limitation, a letter-of-credit right, secondary obligation, or obligation of a secondary obligor, or secondary obligation that supports the payment or performance of an Account, Chattel Paper, a document, a General Intangible, an Instrument, or Investment Property

"Taxes" means all taxes, assessments, vault rentals 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

"UCC" has the meaning given to that term in the Uniform Commercial Code as in effect from time to time in the State of Ohio