

<b>UNITED STATES BANKRUPTCY COURT</b> Northern District of Texas		<b>PROOF OF CLAIM</b>
Name of Debtor: <b>Erickson Retirement Communities, LLC</b>		Case Number: <b>09-37010</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Capmark Bank</b>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where notices should be sent: <b>Capmark Bank</b> <b>c/o Daniel S. Bleck, Esq.</b> <b>Mintz Levin, One Financial Center, Boston, MA 02111</b>  Telephone number: <b>(617) 542-6000</b>		
Name and address where payment should be sent (if different from above): <b>Capmark Bank</b> <b>c/o Stephen Power, Vice President - Senior Asset Manager</b> <b>1600 Tysons Boulevard, Suite 1100, McLean, VA 22102</b>  Telephone number: <b>(703) 749-4202</b>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>10,322,471.81</u>  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</b>  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____).  <b>Amount entitled to priority:</b> \$ _____  <small>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
<b>2. Basis for Claim:</b> <u>Guaranty; see Addendum</u> (See instruction #2 on reverse side.)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> <u>N/A</u>  <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)		
<b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  <b>Nature of property or right of setoff:</b> <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <b>Describe:</b> See Attached Addendum  <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> _____ %  <b>Amount of arrearage and other charges as of time case filed included in secured claim,</b> <b>if any:</b> \$ _____ <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____ <b>Amount Unsecured:</b> \$ _____		
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
<b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain: <b>See Attached Addendum</b>		
<b>Date:</b> <u>2/24/10</u> <b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <div style="text-align: center;"> </div> <b>R. Stephen Power, Vice President - Senior Asset Manager</b>		<b>FOR COURT USE ONLY</b>  <b>Erickson Ret. Comm. LLC</b>  01637

Addendum to Proof of Claim of:  
Capmark Bank, as Lender in  
*In re Erickson Retirement Communities, et al.*  
Chapter 11 Case No. 09-37010 (Jointly Administered)  
**(Erickson Retirement Communities, LLC)**

**Introduction**

Capmark Bank, a Utah industrial bank ("Lender") files its proof of claim (the "Claim") against Erickson Retirement Communities, LLC ("ERC" or "Debtor"), arising out of and relating to that certain Promissory Note given by Westminster Campus, LLC ("Westminster"), and guaranteed by ERC. Westminster Campus, LLC is not a debtor in these jointly administered chapter 11 bankruptcy cases. This claim is filed against ERC, as guarantor. The Lender reserves all of its rights to pursue all claims and causes of action against non-debtor Westminster.

As of October 19, 2009 (the "Petition Date"), the Debtor was obligated to the Lender in the outstanding amount of not less than \$10,322,471.81, plus accruing post petition interest, costs and expenses, arising out of and relating to a loan facility (the "Loan") that the Lender extended to Westminster for the acquisition of the fee simple estate in certain real property located in Adams County, Colorado (the "Property").

**Summary of Documents Supporting Lender's Claim**

This recitation of Loan documents herein is to provide the Court and parties in interest with a summary of the relevant Loan documents relating to Westminster. The documents referenced and described herein include the primary agreements between the parties; however, not all documents relating to the financing of Westminster's acquisition of the Property are described or otherwise referenced herein. Failure to describe or otherwise reference a document or ancillary document thereto shall not be deemed a waiver of any right, claim or interest by the Lender under such documents or otherwise. All of the loan documents referenced herein, together with all of the other agreements between the parties relating to the Lender's financing the development of the Wind Crest Campus shall be referred to collectively as the "Loan Documents." Copies of all Loan Documents summarized herein have been filed with this Claim as "PDF" file documents on a CD supplied to the Claims Agent pursuant to the Claims Protocol Order. Copies of the Exhibits shall be made available upon request to Adrienne Walker, Esq., Mintz Levin Cohn Ferris Glovsky and Popeo, PC., [awalker@mintz.com](mailto:awalker@mintz.com) or (617) 348-1612.

1. **The Loan.**

The Lender gave a loan to the Debtor for the acquisition of the Property in the original principal amount of \$9,724,009.00. The Loan was evidenced by a Promissory Note dated January 11, 2007 given by Westminster and payable to the Lender (as amended, restated, supplemented or otherwise modified from time to time, the "Note"). A true and accurate copy of the Note is filed with this Claim as **Exhibit A**.

2. **Guaranty and Subordination.**

Pursuant to that certain Payment and Performance Guaranty, dated January 11, 2007, executed by ERC the ("Guarantor") for the benefit of the Lender (as amended, restated, supplemented or otherwise modified from time to time, the "Guaranty"). The Guarantor unconditionally guaranteed the Guaranty Obligations (as defined in the Guaranty), including but not limited to (i) all amounts due with respect to the Loan; (ii) the payment of all expenses and charges relating to the Loan; (iii) the performance of all obligations of Westminster under the Note; and (iv) Subordination of Guarantor's claims against Westminster until such time as the Guaranty Obligations are paid in full. A true and accurate copy of the Guaranty is filed with this Claim as **Exhibit B**.

3. **Security and Collateral.**

The Note was secured by, *inter alia*, a first-priority lien against substantially all assets of Westminster including, but not limited to Westminster's right, title and interest in the Property. The security interests of the Lender arise under the terms of a variety of collateral agreements, guarantees, instruments and other documents executed in connection with the Loan (collectively, the "Collateral Documents"), including but not limited to: (i) Deed of Trust, Assignment of Rents and Lease and Security Agreement; and (ii) Membership Interest Pledge Agreement. The Lender perfected its right, title and interest in all of the assets of the Debtor relating to the Property as provided in the Collateral Documents:

Summary descriptions of aforementioned Collateral Documents are as follows:

- A. **Deed of Trust.** Pursuant to certain Deed of Trust, Assignment of Rents and Leases and Security Agreement, dated as of January 11, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "DOT"), given by Westminster, for the benefit of the Lender, Westminster secured its obligation under the Loan Documents by a first-priority security interest in and continuing lien on substantially all of Westminster's assets, including, *inter alia*, all of Westminster's real property, equipment, fixtures, receivables and receivable records, and all proceeds, products, accessions, additions to, substitutions for and replacements of or in respect of any of the foregoing, in each case whether then owned or existing or thereafter acquired. In addition, Westminster assigned to Lender all Rents and Leases, each as defined in DOT). A true and accurate copy of the DOT is filed with this Claim as **Exhibit C**.
- B. **Member Interest Pledge.** Pursuant to that certain Member Interest Pledge Agreement, dated as of January 11, 2007, entered into by and between the Lender and ERC (as amended, restated, supplemented or otherwise modified from time to time, the "ERC Member Interest Pledge"), ERC granted to the Lender, to secure ERC's obligations under the Guaranty, a first-priority security interest in and continuing lien on ERC's membership interest in Westminster, whether then owned or thereafter acquired, all present and future rights of ERC to receive any income, cash profits, proceeds, or distributions arising therefrom, together with all proceeds, both cash and non-cash, arising out of or in respect of the foregoing, all

substitutions, additions, interest, dividends and other distributions arising out of or in respect thereof, and all books, records, papers and general intangibles related thereto. A true and accurate copy of the ERC Member Interest Pledge is filed with this Claim as **Exhibit D**.

### **Amount and Priority of Lender's Claim**

Prior to the Petition Date, Westminster defaulted on its obligations to the Lender under the terms of the Loan Documents. As of the Petition Date, the amounts owed to the Lender by the Debtor under the Loan Documents was not less than the following:

#### **Capmark Bank**

Principal:	\$9,724,009.00
Interest:	\$489,982.01
Late Charges:	\$2,903.71
Legal Counsel expenses (counsel for Lender):	\$8,000.00
Professional Fees (non-legal):	\$97,550.09

<b>Total (as of Petition Date):</b>	<b><u>\$10,322,471.81</u></b>
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Lender additionally asserts contingent and/or unliquidated claims against the Debtor for any damages or losses that Lender may suffer as a result of Westminster's breach of its obligations relating to any of the Loan Documents.

Lender asserts the right to (a) recover post-petition amounts due under the Loan Documents, including ongoing costs of collection (including attorney's fees), principal, interest, premium, fees, costs and charges, which amounts may be unliquidated in whole or in part and continue to accrue, and (b) assert any additional claims including unsecured claims, administrative expense claims, priority and/or super-priority claims pursuant to sections 503 and 507 of the Bankruptcy Code and nothing contained herein shall be deemed a waiver or release of such claims or rights.

### **Reservations**

Lender expressly reserves its right to modify, amend or supplement this Claim at any time and in any respect. This Claim is made without prejudice to Lender filing additional claims with respect to any other indebtedness or liability of ERC.

By executing and filing this Claim, Lender does not waive any right with respect to any security or any other claim it has or may have against Westminster or any other person or entity. The filing of this Claim is not intended and should not be construed to be an election of remedies or waiver of any past, present or future defaults or events of default under the Loan Documents.



Lender submits itself to the jurisdiction of the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") and, to the extent the Bankruptcy Court may constitutionally exercise the powers of the District Court for the Northern District of Texas, to the Bankruptcy Court solely for the purpose of the resolution of the claims set forth herein. Lender objects to the exercise of jurisdiction by the Bankruptcy Court over Lender or over any cases or controversies concerning Lender for any other purpose. Lender demands trial by jury on all issues so triable.

February 26, 2010

**FEDERAL EXPRESS**

BMC Group, Inc.  
Attn: Erickson Retirement Communities  
18750 Lake Drive East  
Chanhassen, MN 55317

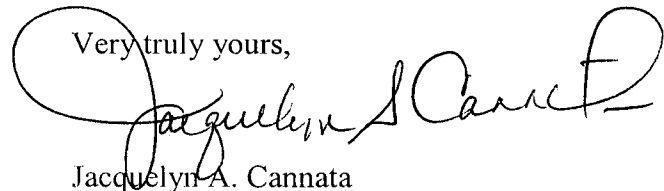
Re: Erickson Retirement Communities, LLC  
Case No. 09-37010

Dear Sir or Madam:

Enclosed for filing in the above-referenced matter please find an original and a copy of a proof of claim on behalf of Capmark Bank together with a CD containing Exhibits to this claim.

Please date stamp the enclosed copy and return same in the enclosed self addressed envelope. Thank you for your attention to this matter.

Very truly yours,



Jacquelyn A. Cannata

Enclosure  
cc: R. Stephen Power, Senior Asset Manager  
Adrienne K. Walker, Esq.

4848361v.1

## PROMISSORY NOTE

\$9,724,009.00

Baltimore, Maryland  
January 11, 2007

FOR VALUE RECEIVED, the undersigned WESTMINSTER CAMPUS, LLC, a Maryland limited liability company having an address at c/o Erickson Retirement Communities, 701 Maiden Choice Lane, Baltimore, Maryland 21228 (the "**Borrower**"), hereby promises to pay to the order of CAPMARK BANK, a Utah industrial bank, having an address at 116 Welsh Road, Horsham, Pennsylvania 19044-0809, 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 Lender's said address or at such other place or to such other person as may be designated in writing to Borrower by Lender, the principal sum of Nine Million Seven Hundred Twenty-Four Thousand Nine and 00/100 Dollars (\$9,724,009.00) (the "**Loan**"), together with interest on the unpaid balance thereof at the rate hereinafter set forth.

ON THE TERMS AND SUBJECT TO THE CONDITIONS which are hereinafter set forth:

### Section 1. Interest Rate.

1.1 Initial Note Rate. Interest shall accrue on the outstanding principal balance of the Loan from and after the date hereof ("**Closing Date**") at the rate of seven and seventy-two hundredths percent (7.72%) per annum ("**Initial Note Rate**"). If the Loan is funded on a date other than the fifteenth (15<sup>th</sup>) day of a calendar month, Borrower shall pay to Lender at the time of funding of the Loan an interest payment calculated by multiplying (i) (x) if the Closing Date is prior to the fifteenth (15<sup>th</sup>) day of a calendar month, the number of days from and including the Closing Date to (but excluding) the fifteenth (15<sup>th</sup>) day of the current month or (y) if the Closing Date is after the fifteenth (15<sup>th</sup>) day of the month, the number of days from and including the Closing Date to (but excluding) the fifteenth (15<sup>th</sup>) day of the next calendar month by (ii) the Initial Note Rate calculated based on 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.

1.2 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. Except as otherwise set forth in the Section 1.1 above, interest shall accrue, with respect to any Payment Date, from the period beginning on the fifteenth (15<sup>th</sup>) day of the month prior to such Payment Date, through and including the fourteenth (14<sup>th</sup>) day of the month of such Payment Date (each an "**Interest Accrual Period**"). By way of example, for a Payment Date of February 9, the Interest Accrual Period would run from January 15 through and including February 14.

1.3 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 (taking into account any applicable grace, notice and/or cure periods) whether at maturity or by acceleration, or if an Event of Default exists, the Note Rate then payable on the Loan shall immediately 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 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.

1.4 Note Rate and Note Rate Adjustment Dates. The “**Note Rate**” shall mean an interest rate which is the average of London Interbank Offered Rates (“**LIBOR**”), in U.S. dollar deposits, for a term of one month determined solely by Lender on each Note Rate Adjustment Date (defined below) plus two and forty one hundredths percent (2.40%) (“**Margin**”). On each Note Rate Adjustment Date, Lender will obtain the close-of-business LIBOR from “Page 3750” on the Telerate Service (or such other page as may replace Page 3750 on that service) on the Note Rate Adjustment Date. If Telerate Service ceases publication or ceases to publish LIBOR, Lender 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 than the Initial Note Rate shall be determined two (2) Business Days prior to the Closing Date.

1.5 Adjustments due to Calculation Errors. This Note shall bear interest at the Initial Note Rate and Note Rate as determined in accordance with the provisions hereof; provided, however, that, if Lender 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 Initial Note Rate, the Note Rate or otherwise), Lender 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 Lender any sums that Borrower would have otherwise been obligated under this Note to pay to Lender 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 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 Lender had the amount of such monthly payment not been miscalculated.

1.6 LIBOR Unascertainable. Lender’s obligation to maintain interest based on LIBOR shall be suspended and the Note Rate shall be based on the Interest Rate Index (plus Margin) upon Lender’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 Lender prices loans (which determination by Lender shall be conclusive and binding on Borrower in the absence of manifest error). Computation of the Note Rate based on the Interest Rate Index shall continue until Lender determines that the circumstances giving rise to Lender’s substitution of the Interest Rate Index for LIBOR no longer exists and Lender shall promptly notify Borrower of such determination. For purposes hereof “**Interest Rate Index**” shall mean the weekly average yield

on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board forty-five (45) days prior to each Note Rate Adjustment Date.

1.7 Adjustment for Impositions on Loan Payments. All payments made by Borrower under this Note and the other Loan Documents (described in Section 8.1.1 below) 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**”). If Borrower shall be required by law to deduct any Applicable Taxes from or in respect of any sum payable hereunder to Lender, the following shall apply: (i) 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 (ii) the sum payable to Lender shall be increased in an amount determined by Lender in its reasonable discretion, as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 1.7), Lender receives an amount equal to the sum Lender would have received had no such deductions been made. Payments made pursuant to this Section 1.7 shall be made within ten (10) Business Days after Lender makes written demand therefore.

1.8 Increased Costs of Maintaining Interest. Borrower shall pay to Lender all Funding Losses incurred from time to time by Lender upon demand. Lender shall deliver to Borrower a statement for any such sums to which Lender is entitled to receive pursuant to this Section 1.8, which statement shall be binding and conclusive absent manifest error. Payment of Funding Losses hereunder shall be in addition to any obligation to pay any other fee in circumstances where such fee(s) would be due and owing under the Loan Documents. For purposes hereof, “**Funding Losses**” shall mean the reduction of any amounts received or receivable from Borrower, in either case, due to the introduction of, or any change in, law or applicable regulation or treaty (including the administration or interpretation thereof), whether or not having the force of law, or due to the compliance by Lender with any directive, whether or not having the force of law, or request from any central bank or domestic or foreign governmental authority, excluding, however amounts based solely on the income taxes of Lender.

1.9 Acceleration. Notwithstanding anything to the contrary contained herein, if Borrower is prohibited by law from paying any amount due to Lender under Section 1.7 or Section 1.8 hereof, Lender 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 one hundred twenty (120) days of Lender’s written notice to Borrower and no Exit Fee (defined in Section 5 below) shall be due in such event. Lender’s delay or failure in accelerating the Loan upon the discovery or occurrence of an event under Section 1.7 or Section 1.8 shall not be deemed a waiver or estoppel against the exercise of such right.

## Section 2. Note Payments and Prepayment Rights.

2.1 Note Payments and Payment Dates. Commencing on the ninth (9<sup>th</sup>) of February, 2007, and continuing on the ninth (9<sup>th</sup>) day of each successive month thereafter, provided that, if the ninth (9<sup>th</sup>) 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”), through and including the Payment Date immediately prior to the Maturity Date, Borrower shall make monthly payments of interest determined at the Note Rate in effect under this Note.

2.2 Prepayments. Borrower has the right to prepay all or any part of the Loan prior to the Maturity Date. Borrower may only prepay the Loan in whole or in part on any Payment Date so long as each of the following conditions are satisfied:

- (A) Borrower provides written notice to Lender of its intent to prepay not less than five (5) Business Days prior to the intended prepayment date.
- (B) Borrower pays with such prepayment all accrued interest through the end of the current Interest Accrual Period and all other outstanding amounts then due and unpaid under the Loan Documents.
- (C) Borrower pays with such prepayment the Exit Fee except as otherwise set forth in Section 5.
- (D) Borrower pays with such prepayment all costs and expenses incurred by Lender in connection with such prepayment and any other costs and expenses due and payable by Borrower under the Loan Documents.

Section 3. Application of Payments. Payments made by Borrower on account hereof shall be applied, first, toward any Late Fees (defined in Section 8.3 below) or other fees and charges due hereunder, second, toward payment of any interest due at the Default Rate, third, toward payment of any interest due at the then applicable Note Rate set forth in Section 1.4 above, and fourth, toward payment of principal. Notwithstanding the foregoing, if any advances made by Lender under the terms of any instruments securing this Note have not been repaid, any payments made may, at the option of Lender, be applied, first, to repay such advances and interest thereon, with the balance, if any, applied as set forth in the preceding sentence.

Section 4. Maturity Date. Anything in this Note to the contrary notwithstanding, the entire unpaid balance of the principal amount hereof and all interest accrued thereon through the end of the then 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 January 9, 2008 (the “**Maturity Date**”); provided that if the ninth (9<sup>th</sup>) day of that month is not a Business Day, such payment shall be due and payable on the immediately preceding Business Day

Section 5. Extension of Maturity Date.

- (i) Extension Option. Borrower has the right to extend the Maturity Date of this Note for one (1) additional term (the “**Extension Term**”) of twelve (12) months, extending the Maturity Date to

February 9, 2009 (“**Extended Maturity Date**”), subject to the conditions precedent set forth below. Upon Borrower’s proper and timely exercise of its rights under this Section 5, the term “**Maturity Date**” shall be deemed to be the Extended Maturity Date.

- (ii) Conditions Precedent to Maturity Date Extension. Each of the following conditions must be satisfied in a manner acceptable to Lender (or waived in writing by Lender) as a condition precedent to extension of the Maturity Date:
  - (A) Borrower delivers written notice to Lender not more than sixty (60) days and not less than thirty (30) days prior to the expiring Maturity Date advising that Borrower is exercising its extension option.
  - (B) No Event of Default exists and no event or condition exists that would be an Event of Default if notice had been given or applicable grace/cure periods had expired (or both), as of the date Borrower exercises such extension option and as of the commencement date of the Extension Term.
  - (C) Borrower executes and delivers to Lender an amendment to this Note, acceptable to Lender in all respects, which confirms the date to which the Maturity Date has been extended, the principal and interest amounts payable during the Extension Term, and such other matters as Lender may require.
  - (D) Borrower reimburses Lender for all costs reasonably incurred by Lender in processing the extension request, including, without limitation, reasonable legal fees.
  - (E) Borrower is actively pursuing an ADC Loan for the Mortgaged Property (as those terms are defined in the Mortgage referenced herein) with the Lender.
  - (F) Unless all zoning and entitlement hurdles necessary for the Mortgaged Property to be developed as a continuing care retirement community of the type described by Borrower to Lender have been achieved and evidence of the same satisfactory to Lender and its counsel have been presented by Borrower, the Borrower shall reduce the outstanding principal balance of this Note to not more than \$7,779,207.20 prior to commencement of the Extension Term.

The Maturity Date and/or any other date by which any payment is required to be made hereunder may be extended by Lender, in writing, from time to time in the exercise of its sole discretion, without in any way altering or impairing Borrower's or Guarantor's liability hereunder.

Section 6. Exit Fee. As consideration of Lender's making of the Loan to Borrower, Borrower agrees to pay a deferred financing fee ("**Exit Fee**") to Lender in an amount equal to one percent (1%) of the original principal amount of the Loan. Although the Exit Fee is earned in full on the date hereof, Lender hereby agrees to defer payment of the Exit Fee until the earlier of (a) the date when full repayment of the Loan occurs, (b) the Maturity Date, or (c) the date on which the Loan has been accelerated following an Event of Default. Notwithstanding the sale or transfer of the Loan by Capmark Bank in whole or in part, to a successor lender, unless Capmark Bank has transferred its interest in the Exit Fee to its successors or assigns as Lender, the Exit Fee shall be payable to Capmark Bank.. Notwithstanding the foregoing, if Borrower refinances this Loan with the proceeds of a loan arranged for Borrower by Capmark Bank then no Exit Fee shall be due. Borrower acknowledges that Capmark Bank, has any obligation to make such loan.

Section 7. Delivery of Payments. All payments due to Lender under the Loan Documents are to be paid in immediately available funds to Lender at Lender's office located at 116 Welsh Road, Horsham, Pennsylvania 19044, Attn: Servicing - Accounting Manager, or at such other place as Lender may designate to Borrower in writing from time to time. All amounts due under the Loan Documents shall be paid without setoff, counterclaim or any other deduction whatsoever. No payment due under this Note or any of the other Loan Documents shall be deemed paid to Lender until received by Lender at its designated office on a Business Day prior to 2:00 p.m. Eastern Standard 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 Lender 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 Lender 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 Lender, 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.

Section 8. Security. The debt evidenced by this Note is to be secured by, among other things, (a) a Deed of Trust, Assignment of Rents and Leases and Security Agreement (the "**Mortgage**") of even date herewith given by Borrower for the benefit of Lender, and intended to be recorded in the office of the land records of, Adams County, Colorado, covering certain real property which is described in Exhibit "A" to the Mortgage, and (b) a Payment and Performance Guaranty Agreement of even date herewith (the "**Guaranty Agreement**"), given by Erickson Retirement Communities, LLC, a Maryland limited liability company (the "**Guarantor**"), for the benefit of Lender.

Section 9. Default.



9.1 Events of Default. Anything in this Note to the contrary notwithstanding, on the occurrence of any of the following events (each of which is referred to herein, together with each of the Events of Default defined and described in the Mortgage as an “**Event of Default**”), Lender may, in the exercise of its sole and absolute discretion, accelerate the debt evidenced by this Note, in which event the entire outstanding principal balance and all interest and fees accrued thereon shall immediately be and become due and payable without further notice:

9.1.1 Failure to Pay or Perform. If (a) any payment of principal and interest is not paid in full on or before the Payment Date on which such payment is due, and such failure continues for five (5) days after the applicable Payment Date, or if the Exit Fee is not paid in full when required, (b) if unpaid principal, accrued but unpaid interest and all other amounts outstanding under the Loan Documents (defined below) are not paid in full on or before the Maturity Date or (c) there exists an uncured default under this Note or any other document or instrument evidencing or securing the Loan (collectively, the “**Loan Documents**”) which has been executed by Borrower and/or Guarantor, and such default is not cured within the grace or cure period, if any, provided in any of such Loan Documents.

9.1.2 Bankruptcy.

(a) If Borrower or Guarantor (i) applies for or consents to the appointment of a receiver, trustee or liquidator of Borrower or Guarantor, as the case may be, or of all or a substantial part of its assets, (ii) files a voluntary petition in bankruptcy, or admits in writing its inability to pay its debts as they come due, (iii) makes an assignment for the benefit of creditors, (iv) files a petition or an answer seeking a reorganization or an arrangement with creditors or seeking to take advantage of any insolvency law, (v) performs any other act of bankruptcy, or (vi) files an answer admitting the material allegations of a petition filed against Borrower or Guarantor in any bankruptcy, reorganization or insolvency proceeding; or

(b) if (i) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating Borrower or Guarantor a bankrupt or an insolvent, or approving a receiver, trustee or liquidator of Borrower or Guarantor or of all or a substantial part of its assets, or (ii) there otherwise commences with respect to Borrower or Guarantor or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or like law or statute, and if such order, judgment, decree or proceeding continues unstayed for any period of sixty (60) consecutive days after the expiration of any stay thereof.

9.1.3 Judgments. If any judgment for the payment of money in excess of \$100,000.00 hereafter awarded against Borrower or Guarantor by any court of competent jurisdiction remains unsatisfied or otherwise in force and effect and not effectively stayed or bonded over to the satisfaction of the Lender for a period of thirty (30) days after the date of such award.

9.2 No Impairment of Rights. Nothing in this Section shall be deemed in any way to alter or impair any right which Lender has under this Note or the Mortgage, or any other Loan Documents, or at law or in equity, to accelerate such debt on the occurrence of any other Event of Default provided herein or therein, whether or not relating to this Note.

9.3 Late Fees. Without limiting the generality of the foregoing provisions of this Section, if any payment due on a Payment Date is not received in full on or before five (5) calendar days after the Payment Date, Borrower shall pay to Lender, 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 Lender in handling and processing such delinquent payment and to compensate Lender for the loss of use of such delinquent payment.

Section 10. Costs of Enforcement. Borrower shall pay to Lender on demand the amount of any and all expenses incurred by Lender (a) in enforcing its rights hereunder or under the Mortgage and/or the Loan Documents, (b) as the result of the occurrence of an Event of Default by Borrower in performing its obligations under this Note, including but not limited to the expense of collecting any amount owed hereunder, and of any and all attorneys' fees incurred by Lender in connection with such 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 Mortgage and shall accrue interest at the Default Rate.

Section 11. 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 Lender's exercise of any of its rights under this Note or the Loan Documents.

Section 12. Interest Rate Caps. Lender reserves the right to require Borrower to purchase interest rate caps in form satisfactory to Lender within ten (10) days following Lender's written request to Borrower to do so.

Section 13. General.

13.1 Applicable Law. This Note shall be given effect and construed by application of the laws of the State of Colorado (without regard to the principles thereof governing conflicts of laws), and any action or proceeding arising hereunder, and each of Lender and Borrower submits (and waives all rights to object) to non-exclusive personal jurisdiction in the State of Colorado, 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 for the District of Colorado or any successor federal court having original jurisdiction.

13.2 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.

13.3 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.

13.4 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.

13.5 No Waiver. Lender shall not be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing. No delay or omission by Lender in exercising any such right (and no allowance by Lender to Borrower of an opportunity to cure a default in performing its obligations hereunder) shall be deemed a waiver of its future exercise. No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. Further, acceptance by Lender of all or any portion of any sum payable under, or partial performance of any covenant of, this Note, the Mortgage or any of the other Loan Documents, whether before, on, or after the due date of such payment or performance, shall not be a waiver of Lender’s right either to require prompt and full payment and performance when due of all other sums payable or obligations due thereunder or hereunder or to exercise any of Lender’s rights and remedies hereunder or thereunder.

**13.6 Waiver of Jury Trial; Service of Process; Court Costs. BORROWER HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH BORROWER AND LENDER MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO, THIS NOTE AND/OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS NOTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER, UPON CONSULTATION WITH COUNSEL OF BORROWER’S CHOICE, AND BORROWER HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD**

**THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. BORROWER HEREBY IRREVOCABLY DESIGNATES GERALD F. DOHERTY, GENERAL COUNSEL OF ERICKSON RETIREMENT COMMUNITIES, LLC, AND HIS/HER 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 COLORADO AS WELL AS SERVICE OF ALL PLEADINGS AND OTHER DOCUMENTS RELATED TO ANY LEGAL PROCEEDING OR ACTION ARISING OUT OF THIS NOTE. BORROWER AGREES THAT SERVICE UPON SAID GERALD F. DOHERTY 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 LENDER 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 LENDER IN CONNECTION WITH ENFORCING ANY PROVISION OF THIS NOTE. NOTWITHSTANDING THE FOREGOING, LENDER AGREES TO USE REASONABLE EFFORTS TO PROVIDE BORROWER WITH NOTICE OF THE FILING OF ANY LAWSUIT BY LENDER AGAINST BORROWER.**

13.7 Offset. Upon the occurrence of an Event of Default, 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, Lender, to the credit of or for the account of Borrower, without notice to or consent of Borrower or Guarantor.

13.8 Non-Exclusivity of Rights and Remedies. None of the rights and remedies herein conferred upon or reserved to Lender 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 Lender.

13.9 Incorporation by Reference. All of the agreements, conditions, covenants and provisions contained in each of the Loan Documents are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. Borrower covenants and agrees to keep and perform, or cause to be kept and performed, all such agreements, conditions, covenants and provisions strictly in accordance with their terms.

13.10 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.

13.11 Business Purpose. Borrower represents and warrants that the Loan evidenced by this Note is being obtained solely for the purpose of acquiring or carrying on a business, professional or commercial activity and is not for personal, agricultural, family or household purposes.

13.12 Interest Limitation. Notwithstanding anything to the contrary contained herein or in the Mortgage or in any other of the Loan Documents, the effective rate of interest on the obligation evidenced by this Note shall not exceed the lawful maximum rate of interest permitted to be paid. Without limiting the generality of the foregoing, in the event that the interest charged hereunder results in an effective rate of interest higher than that lawfully permitted to be paid, then such charges shall be reduced by the sum sufficient to result in an effective rate of interest permitted and any amount which would exceed the highest lawful rate already received and held by Lender shall be applied to a reduction of principal and not to the payment of interest. Borrower agrees that for the purpose of determining highest rate permitted by law, any non-principal payment (including, without limitation, Late Fees and other fees) shall be deemed, to the extent permitted by law, to be an expense, fee or premium rather than interest.

13.13 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.

13.14 Time of the Essence. Time is strictly of the essence of this Note.

13.15 Negotiable Instrument. Borrower agrees that this Note shall be deemed a negotiable instrument, even though this Note may not otherwise qualify, under applicable law, absent this paragraph, as a negotiable instrument.

13.16 Interest Rate After Judgment. If judgment is entered against Borrower on this Note, the amount of the judgment entered (which may include principal, interest, fees, Late Fees and costs) shall bear interest at the Default Rate, to be determined on the date of the entry of the judgment.

13.17 Relationship. Borrower and Lender intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Note 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 and Lender.

**13.18 Waiver of Automatic Stay. BORROWER HEREBY AGREES THAT, IN CONSIDERATION OF LENDER'S AGREEMENT TO MAKE THE LOAN AND IN RECOGNITION THAT THE FOLLOWING COVENANT IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, IN THE EVENT THAT BORROWER SHALL (A) FILE WITH ANY BANKRUPTCY COURT OF COMPETENT JURISDICTION OR BE THE SUBJECT OF ANY PETITION UNDER ANY SECTION OR CHAPTER OF TITLE 11 OF THE UNITED STATES CODE, AS AMENDED (THE "BANKRUPTCY CODE"), OR SIMILAR LAW OR STATUTE; (B) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE BANKRUPTCY CODE OR SIMILAR LAW OR STATUTE; (C) FILE OR BE THE SUBJECT OF ANY PETITION SEEKING ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY, OR OTHER RELIEF FOR DEBTORS; (D) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY**

**TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR; OR (E) BE THE SUBJECT OF AN ORDER, JUDGMENT OR DECREE ENTERED BY ANY COURT OF COMPETENT JURISDICTION APPROVING A PETITION FILED AGAINST ANY BORROWER FOR ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY OR RELIEF FOR DEBTORS, THEN, TO THE EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO COURT APPROVAL, LENDER SHALL THEREUPON BE ENTITLED, AND BORROWER HEREBY IRREVOCABLY CONSENTS TO, AND WILL NOT CONTEST, AND AGREES TO STIPULATE TO, RELIEF FROM ANY AUTOMATIC STAY OR OTHER INJUNCTION IMPOSED BY SECTION 362 OF THE BANKRUPTCY CODE OR SIMILAR LAW OR STATUTE (INCLUDING, WITHOUT LIMITATION, RELIEF FROM ANY EXCLUSIVE PERIOD SET FORTH IN SECTION 1121 OF THE BANKRUPTCY CODE) OR OTHERWISE, ON OR AGAINST THE EXERCISE OF THE RIGHTS AND REMEDIES OTHERWISE AVAILABLE TO LENDER AS PROVIDED IN THE LOAN DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND BORROWER HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO OBJECT TO SUCH RELIEF.**

13.19 “Business Day”. Any reference to the term Business Day in this Note shall mean any day other than a Saturday, a Sunday, or days when Federal Banks located in the State of New York or Commonwealth of Pennsylvania are closed for a legal holiday or by government directive. 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.

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IN WITNESS WHEREOF, Borrower has executed and sealed this Note or caused it to be executed and sealed on its behalf by its duly authorized representatives, the day and year first above written, and the obligations under this Note shall be binding upon Borrower's successors and assigns.

WITNESS:

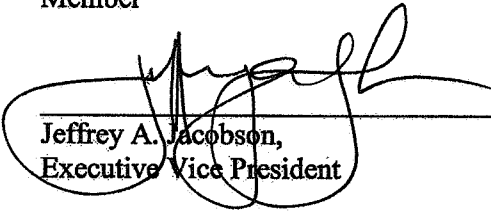
**BORROWER:**

WESTMINSTER CAMPUS, LLC,  
a Maryland limited liability company

By: Erickson Retirement Communities, LLC,  
a Maryland limited liability company,  
Member

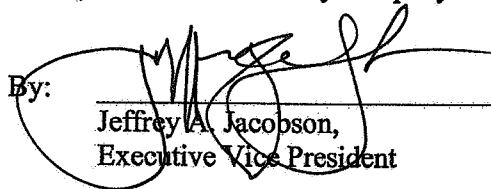
  
\_\_\_\_\_

Print Name

By:   
\_\_\_\_\_  
Jeffrey A. Jacobson,  
Executive Vice President

ACKNOWLEDGED BY GUARANTOR THIS  
4<sup>th</sup> DAY OF JANUARY, 2007:

ERICKSON RETIREMENT COMMUNITIES, LLC,  
a Maryland limited liability company

By:   
\_\_\_\_\_  
Jeffrey A. Jacobson,  
Executive Vice President (SEAL)

## MEMBERSHIP INTEREST PLEDGE AGREEMENT

This MEMBERSHIP INTEREST PLEDGE AGREEMENT (the "Agreement") is made and entered into as of January 11, 2007, (the "Effective Date") by and among ERICKSON RETIREMENT COMMUNITIES, LLC, a Maryland limited liability company (the "**Pledgor**"), and CAPMARK BANK, a Utah industrial bank ("**Secured Party**").

### **RECITALS**

A. Pledgor is the sole legal and beneficial owner of the membership interests (the "**Pledged Interests**") in Westminster Campus, LLC a Maryland limited liability company (the "**Company**") which is the Grantor described in the Deed of Trust (defined below).

B. Grantor has entered into a Deed of Trust, Assignment of Rents and Leases and Security Agreement, dated of even date herewith for the benefit of the Secured Party (as such Deed of Trust may hereafter be amended, supplemented or otherwise modified from time to time, being the "**Deed of Trust**"), pursuant to which Secured Party has agreed, subject to the terms and conditions set forth in the Deed of Trust, to make a loan to the Grantor in the amount of Nine Million Seven Hundred Twenty Four Thousand Nine Dollars (\$9,724,009) (the "**Loan**"), which Loan is guaranteed by Pledgor pursuant to a Payment and Performance Guaranty Agreement from Pledgors to the Secured Party dated of even date herewith (the "**Guaranty**"). All initially-capitalized terms not otherwise defined herein (including the term "**Event of Default**") shall have the meanings given such terms in the Deed of Trust.

C. It is a condition precedent to the extension of credit by Secured Party under the Deed of Trust that Pledgor shall have granted the security interests and undertaken the obligations contemplated by this Agreement.

NOW, THEREFORE, in consideration of the premises and in order to induce Secured Party to make the Loan under the Deed of Trust and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Pledgor hereby agrees with Secured Party as follows:

SECTION 1. Pledge of Security. Pledgor hereby pledges to Secured Party, and hereby grants to Secured Party a security interest in, all of Pledgor's right, title and interest in and to the following (the "**Pledged Collateral**"):

(a) the Pledged Interests and any interest of Pledgor in the entries on the books of any financial intermediary pertaining to the Pledged Interests, and all dividends, distributions, cash, warrants, rights, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Interests;

(b) all additional interests in, and all securities convertible into and warrants, options and other rights to purchase or otherwise acquire, interests in any issuer of the Pledged Interests from time to time acquired by Pledgor in any manner (which interests shall be deemed to be part



of the Pledged Interests), the certificates or other instruments (if any) representing such additional interests, securities, warrants, options or other rights and any interest of Pledgor in the entries on the books of any financial intermediary pertaining to such additional interests, and all dividends, distributions, cash, warrants, rights, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such additional interests, securities, warrants, options or other rights;

(c) to the extent not covered by clauses (a) and (b) above, all proceeds of any or all of the foregoing Pledged Collateral. For purposes of this Agreement, the term "proceeds" includes whatever is receivable or received when Pledged Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes, without limitation, proceeds of any indemnity or guaranty payable to Pledgor or Secured Party from time to time with respect to any of the Pledged Collateral.

SECTION 2. Security for Obligations. This Agreement secures, and the Pledged Collateral is collateral security for, the prompt payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. §362(a)), of the Loan and all obligations and liabilities of every nature of the Company now or hereafter existing under or arising out of or in connection with the Deed of Trust and the Security Documents and all extensions or renewals thereof, whether for principal, interest (including without limitation interest that, but for the filing of a petition in bankruptcy with respect to the Company, would accrue on such obligations), fees, expenses, indemnities or otherwise, whether voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not jointly owed with others, and whether or not from time to time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations or liabilities that are paid, to the extent all or any part of such payment is avoided or recovered directly or indirectly from Secured Party as a preference, fraudulent transfer or otherwise (all such obligations and liabilities being the "Indebtedness"), and all obligations of every nature of the Pledgor now or hereafter existing under this Agreement (all such obligations of the Pledgor, together with the Indebtedness, being the "Secured Obligations").

SECTION 3. Delivery of Pledged Collateral. All certificates or instruments representing or evidencing the Pledged Collateral (if any) shall be delivered to and held by or on behalf of Secured Party pursuant hereto and shall be in suitable form for transfer by delivery or, as applicable, shall be accompanied by Pledgor's endorsement, where necessary, or duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to Secured Party. Secured Party shall have the right, at any time in its discretion and without notice to Pledgor, to transfer to or to register in the name of Secured Party or any of its nominees any or all of the Pledged Collateral, subject only to the revocable rights specified in Section 7(a). In addition, Secured Party shall have the right at any time to exchange any such certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations.

SECTION 4. Representations and Warranties. Pledgor represents and warrants with respect to itself as follows:

(a) Due Authorization, etc. of Pledged Collateral. All of the Pledged Interests held by Pledgor have been duly authorized and validly issued and are fully paid and non-assessable. There are no certificates or instruments representing or evidencing the Pledged Collateral and the Pledgor will not cause or allow or participate in the issuance of any such certificates or instruments.

(b) Ownership of Pledged Collateral. Pledgor is the legal, record and beneficial owner of the Pledged Collateral free and clear of any lien except for the security interest created by this Agreement.

(c) Governmental Authorizations. No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for either (i) the pledge by Pledgor of the Pledged Collateral pursuant to this Agreement and the grant by Pledgor of the security interest granted hereby or for the execution, delivery or performance of this Agreement by Pledgor or (ii) the exercise by Secured Party of the voting or other rights, or the remedies in respect of the Pledged Collateral, provided for in this Agreement (except as may be required in connection with a disposition of Pledged Collateral by laws affecting the offering and sale of securities generally).

(d) Perfection. The pledge of the Pledged Collateral pursuant to this Agreement, together with the recording of the financing statements executed by Pledgor in connection herewith among the UCC Records of the Maryland State Department of Assessments and Taxation, creates a valid and perfected first priority security interest in the Pledged Collateral, securing the payment of the Secured Obligations.

(e) Description of Pledged Interests. The Pledged Interests constitute one hundred percent (100%) of the issued and outstanding member interests in the Company, and there are no outstanding warrants, options or other rights to purchase, or other agreements outstanding with respect to, or property that is now or hereafter convertible into, or that requires the issuance or sale of, any Pledged Interests.

(f) Margin Regulations. To the best of Pledgor's knowledge, the pledge of the Pledged Collateral pursuant to this Agreement does not violate Regulation G, T, U or X of the Board of Governors of the Federal Reserve System.

(g) Other Information. All information heretofore, herein or hereafter supplied to Secured Party by or on behalf of Pledgor with respect to the Pledged Collateral is accurate and complete in all material respects.

(h) Due Execution. This Agreement is duly executed and delivered by, and is binding in accordance with its terms upon, Pledgor, subject to the effect of bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application and of legal or equitable principles generally and, to the extent applicable apart from the Security Documents, covenants of good faith and fair dealing.

(i) Violation of Agreements. Neither this Agreement nor anything provided in or contemplated by this Agreement does now or shall hereafter breach, invalidate, cancel, make inoperative or interfere with, or result in the acceleration or maturity of, any agreement,

document, instrument, right or interest, affecting or relating to Pledgor or any of the Pledged Collateral.

(j) Litigation. There are no material actions, suits or proceedings pending or, to the best of Pledgor's knowledge after due inquiry, threatened before or by any judicial, administrative or union body, any arbiter or any Governmental Authority, against or affecting Pledgor or any of the Pledged Collateral, except as described in the Guaranty.

#### SECTION 5. Transfers and Other Liens; Additional Pledged Collateral; Etc.

(a) Except as allowed pursuant to the Deed of Trust, Pledgor shall not (i) sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Pledged Collateral, or (ii) create or suffer to exist any lien upon or with respect to any of the Pledged Collateral, or (iii) permit the Company to merge or consolidate unless all the outstanding member interests in the surviving or resulting company is, upon such merger or consolidation, pledged hereunder and no cash, securities or other property is distributed in respect of the outstanding member interests or shares of any other constituent corporation or limited liability company;

(b) Pledgor shall (i) cause the Company not to grant or issue any membership interests or other securities in addition to or in substitution for the Pledged Interests;

(c) Pledgor shall promptly notify Secured Party of any event of which Pledgor becomes aware causing a material loss or depreciation in the value of the Pledged Collateral;

(d) Pledgor shall promptly deliver to Secured Party all written notices received by it with respect to the Pledged Collateral; and

(e) Pledgor shall pay promptly when due all taxes, assessments and governmental charges or levies imposed upon, and all claims against, the Pledged Collateral, except to the extent the validity thereof is being contested in good faith; provided that Pledgor shall in any event pay such taxes, assessments, charges, levies or claims not later than five days prior to the date of any proposed sale under any judgment, writ or warrant of attachment entered or filed against Pledgor or any of the Pledged Collateral as a result of the failure to make such payment.

#### SECTION 6. Further Assurances; Pledge Amendments.

(a) Pledgor agrees that from time to time, at the expense of Pledgor, Pledgor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Secured Party may request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Pledged Collateral. Without limiting the generality of the foregoing, Pledgor will: (i) execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as Secured Party may request, in order to perfect and preserve the security interests granted or purported to be granted hereby and (ii) at Secured Party's request, appear in and defend any action or proceeding that may affect Pledgor's title to or Secured Party's security interest in all or any part of the Pledged Collateral.

- (b) Intentionally Deleted.

SECTION 7. Voting Rights; Dividends; Distributions; Etc.

- (a) So long as no Event of Default shall have occurred and be continuing:

(1) Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Pledged Collateral or any part thereof for any purpose not inconsistent with the terms of this Agreement, and any other Security Document; and

(2) Pledgor shall be entitled to receive and retain, and to utilize free and clear of the lien of this Agreement, only the dividends, distributions and interest permitted under the terms of the Security Documents.

- (b) Upon the occurrence and during the continuation of an Event of Default:

(1) upon written notice from the Secured Party to Pledgor, all rights of such Pledgor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant to Section 7(a)(i) shall cease, and all such rights shall thereupon become vested in the Secured Party who shall thereupon have the sole right to exercise such voting and other consensual rights;

(2) all rights of Pledgor to receive the dividends, distributions and interest payments which it would otherwise be authorized to receive and retain pursuant to Section 7(a)(ii) shall cease, and all such rights shall thereupon become vested in the Secured Party who shall thereupon have the sole right to receive and hold as Pledged Collateral such dividends, distributions and interest payments; and

(3) all dividends, distributions, principal and interest payments which are received by Pledgor contrary to the provisions of paragraph (ii) of this Section 7(b) shall be received in trust for the benefit of the Secured Party, shall be segregated from other funds of Pledgor and shall forthwith be paid over to the Secured Party as Pledged Collateral in the same form as so received (with any necessary endorsements).

(c) In order to permit the Secured Party to exercise the voting and other consensual rights which it may be entitled to exercise pursuant to Section 7(b)(1) and to receive all dividends and other distributions which it may be entitled to receive under Section 7(a)(2) or Section 7(b)(3), Pledgor shall promptly execute and deliver (or cause to be executed and delivered) to the Secured Party all such proxies, dividend or distribution payment orders and other instruments as the Secured Party may from time to time reasonably request.

SECTION 8. Secured Party Appointed Attorney-in-Fact. Pledgor hereby irrevocably appoints Secured Party as Pledgor's attorney-in-fact, with full authority in the place

and instead of Pledgor and in the name of Pledgor, Secured Party or otherwise, from time to time in Secured Party's discretion to take the following actions and to execute any instrument relating thereto that Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement as follows:

(a) to file one or more financing or continuation statements, or amendments thereto, relative to all or any part of the Pledged Collateral without the signature of Pledgor;

(b) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for money due and to become due under or in respect of any of the Pledged Collateral;

(c) to receive, endorse and collect any instruments made payable to Pledgor representing any dividend, principal or interest payment or other distribution in respect of the Pledged Collateral or any part thereof and to give full discharge for the same; and

(d) to file any claims or take any action or institute any proceedings that Secured Party may deem necessary or desirable for the collection of any of the Pledged Collateral or otherwise to enforce the rights of Secured Party with respect to any of the Pledged Collateral.

The Secured Party shall not take any of the actions described in paragraphs (b), (c) or (d) until after the occurrence of an Event of Default.

SECTION 9. Secured Party May Perform. If Pledgor fails to perform any agreement contained herein, Secured Party may itself perform, or cause performance of, such agreement, and the expenses of Secured Party incurred in connection therewith shall be payable by Pledgor under Section 13(b).

SECTION 10. Standard of Care. The powers conferred on Secured Party hereunder are solely to protect its interest in the Pledged Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Pledged Collateral in its possession and the accounting for moneys actually received by it hereunder, Secured Party shall have no duty as to any Pledged Collateral, it being understood that Secured Party shall have no responsibility for (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Pledged Collateral, whether or not Secured Party has or is deemed to have knowledge of such matters, (b) taking any necessary steps (other than steps taken in accordance with the standard of care set forth above to maintain possession of the Pledged Collateral) to preserve rights against any parties with respect to any Pledged Collateral, (c) taking any necessary steps to collect or realize upon the Secured Obligations or any guarantee therefor, or any part thereof, or any of the Pledged Collateral, or (d) initiating any action to protect the Pledged Collateral against the possibility of a decline in market value. Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of Pledged Collateral in its possession if such Pledged Collateral is accorded treatment substantially equal to that which Secured Party accords its own property consisting of negotiable securities.

## SECTION 11. Remedies.

(a) If any Event of Default shall have occurred and be continuing, Secured Party may exercise in respect of the Pledged Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the Uniform Commercial Code as in effect in any relevant jurisdiction (the "Code") (whether or not the Code applies to the affected Pledged Collateral), and Secured Party may also in its sole discretion, without notice except as specified below, sell the Pledged Collateral or any part thereof in one or more parcels at public or private sale, at any exchange or broker's board or any of Secured Party's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as Secured Party may deem commercially reasonable, irrespective of the impact of any such sales on the market price of the Pledged Collateral. Secured Party may be the purchaser of any or all of the Pledged Collateral at any such sale and Secured Party shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Pledged Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Pledged Collateral payable by Secured Party at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of Pledgor, and Pledgor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Pledgor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to Pledgor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Secured Party shall not be obligated to make any sale of Pledged Collateral regardless of notice of sale having been given. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Pledgor hereby waives any claims against Secured Party arising by reason of the fact that the price at which any Pledged Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if Secured Party accepts the first offer received and does not offer such Pledged Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Pledged Collateral are insufficient to pay all the Secured Obligations, Pledgor shall be liable for the deficiency and the fees of any attorneys employed by Secured Party to collect such deficiency.

(b) Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933, as from time to time amended (the "Securities Act"), and applicable state securities laws, Secured Party may be compelled, with respect to any sale of all or any part of the Pledged Collateral conducted without prior registration or qualification of such Pledged Collateral under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Pledged Collateral for their own account, for investment and not with a view to the distribution or resale thereof. Pledgor acknowledges that any such private sales may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including, without limitation, a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, Pledgor agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that Secured Party shall have no obligation to engage in

public sales and no obligation to delay the sale of any Pledged Collateral for the period of time necessary to permit the insurer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it.

(c) If Secured Party determines to exercise its rights to sell any or all of the Pledged Collateral, upon written request, Pledgor shall cause each issuer of any Pledged Interests to be sold hereunder from time to time to furnish to Secured Party all such information as Secured Party may request in order to determine the number of shares, interest and other instruments included in the Pledged Collateral which may be sold by Secured Party in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

SECTION 12. Application of Proceeds. Except as expressly provided elsewhere in this Agreement, all proceeds received by Secured Party in respect of any sale of, collection from, or other realization upon all or any party of the Pledged Collateral may, in the discretion of Secured Party, be held by Secured Party as Pledged Collateral for, and/or then, or at any time thereafter, applied in full or in part by Secured Party against, the Secured Obligations in the following order of priority:

FIRST: To the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to Secured Party and its agents and counsel, and all other expenses, liabilities and advances made or incurred by Secured Party in connection therewith, and all amounts for which Secured Party is entitled to indemnification hereunder and all advances made by Secured Party hereunder for the account of the Pledgor which owned such Pledged Collateral, and to the payment of all costs and expenses paid or incurred by Secured Party in connection with the exercise of any right or remedy hereunder, all in accordance with Section 13;

SECOND: To the payment of all other Secured Obligations in such order as Secured Party shall elect; and

THIRD: To the payment to or upon the order of the Pledgor which owned such Pledged Collateral, or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct, of any surplus then remaining from such proceeds.

#### SECTION 13. Indemnity and Expenses.

(a) Pledgor agrees to indemnify Secured Party from and against any and all claims, losses and liabilities in any way relating to, growing out or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this Agreement), except to the extent such claims, losses or liabilities result solely from Secured Party's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

(b) Pledgor will pay to Secured Party upon demand the amount of any and all costs and expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, that Secured Party may incur in connection with (i) the administration of this Agreement, (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any

of the Pledged Collateral, (iii) the exercise or enforcement of any of the rights of Secured Party hereunder, or (iv) the failure by Pledgor to perform or observe any of the provisions hereof.

#### SECTION 14. Suretyship Waivers by Pledgor, etc.

(a) Pledgor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than indefeasible payment in full of the Indebtedness. In furtherance of the foregoing and without limiting the generality thereof, Pledgor agrees as follows: (i) Secured Party may from time to time, without notice or demand and without affecting the validity or enforceability of this Agreement or giving rise to any limitation, impairment or discharge of Pledgor's liability hereunder, (A) renew, extend, accelerate or otherwise change the time, place, manner or terms of payment of the Indebtedness, (B) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Indebtedness or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations, (C) request and accept guaranties of the Indebtedness and take and hold other security for the payment of the Indebtedness, (D) release, exchange, compromise, subordinate or modify, with or without consideration, any other security for payment of the Indebtedness, any guaranties of the Indebtedness, or any other obligation of any Person with respect to the Indebtedness, (E) enforce and apply any other security now or hereafter held by or for the benefit of Secured Party in respect of the Indebtedness and direct the order or manner of sale thereof, or exercise any other right or remedy that Secured Party may have against any such security, as Secured Party in its discretion may determine consistent with the Deed of Trust and any applicable Security Document, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right or reimbursement or subrogation or other right or remedy of Pledgor against the Company or any other security for the Indebtedness, and (F) exercise any other rights available to Secured Party under the Security Documents, at law or in equity; and (ii) this Agreement and the obligations of Pledgor hereunder shall be valid and enforceable and shall not be subject to any limitation, impairment or discharge for any reason (other than indefeasible payment in full of the Indebtedness), including without limitation the occurrence of any of the following, whether or not Pledgor shall have had notice or knowledge of any of them: (A) any failure to assert or enforce or agreement not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy with respect to the Indebtedness or any agreement relating thereto, or with respect to any guaranty of or other security for the payment of the Indebtedness, (B) any waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Deed of Trust, any of the other Security Documents or any agreement or instrument executed pursuant thereto, or any guaranty or other security for the Indebtedness, (C) the Indebtedness, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect, (D) the application of payments received from any source to the payment of indebtedness other than the Indebtedness, even though Secured Party might have elected to apply such payment to any part or all of the Indebtedness, (E) any failure to perfect or continue perfection of a security interest in any other collateral which secures any of the Indebtedness, (F) any defenses, set-offs or counterclaims



which the Company may allege or assert against Secured Party in respect of the Indebtedness, including but not limited to failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury, and (G) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of Pledgor as an obligor in respect of the Indebtedness.

(b) Pledgor hereby waives, for the benefit of Secured Party: (i) any right to require Secured Party, as a condition of payment or performance by Pledgor, to (A) proceed against the Company, any guarantor of the Indebtedness or any other Person, (B) proceed against or exhaust any other security held from the Company, any guarantor of the Indebtedness or any other Person, (C) proceed against or have resort to any balance of any deposit account or credit on the books of Secured Party in favor of the Company or any other Person, or (D) pursue any other remedy in the power of Secured Party whatsoever; (ii) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Company including, without limitation, any defense based on or arising out of the lack of validity or the unenforceability of the Indebtedness or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Company from any cause other than indefeasible payment in full of the Indebtedness; (iii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (iv) any defense based upon Secured Party's errors or omissions in the administration of the Indebtedness, except behavior which amounts to bad faith; (v) (A) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Agreement and any legal or equitable discharge of Pledgor's obligations hereunder (B) the benefit of any statute of limitations affecting Pledgor's liability hereunder or the enforcement hereof, (C) any rights to set-offs, recoupments and counterclaims, and (D) promptness, diligence and any requirement that Secured Party protect, secure, perfect or insure any other security interest or lien or any property subject thereto; (vi) notices, demands, presentments, protests, notices of dishonor and notices of any action or inaction, notices of default under the Deed of Trust or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Indebtedness or any agreement related thereto, notices of any extension of credit to the Company and notices of any of the matters referred to in the preceding paragraph and any right to consent to any thereof; and (vii) to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Agreement.

(c) Until the Indebtedness shall have been indefeasibly paid in full, Pledgor shall withhold exercise of (i) any right of subrogation, (ii) any right of contribution Pledgor may have against any guarantor of the Indebtedness, (iii) any benefit of, and any right to participate in, any other security now or hereafter held by Secured Party. Pledgor further agrees that, to the extent the waiver of its rights of subrogation and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation Pledgor may have against the Company or against any other collateral or security, and any rights of contribution Pledgor may have against any such guarantor, shall be junior and subordinate to any rights Secured Party may have against the Company, to all right, title and interest Secured Party may have against the Company, to all right, title and interest Security Party may have in any such other collateral or security, and to any right Secured Party may have against such guarantor.

(d) Secured Party shall have no obligation to disclose or discuss with Pledgor its assessment, or Pledgor's assessment, of the financial condition of the Company. Pledgor has adequate means to obtain information from the Company on a continuing basis concerning the financial condition of each Company and its ability to perform its obligations under the Security Documents, and Pledgor assumes the responsibility for being and keeping informed of the financial condition of the Company and all of circumstances bearing upon the risk of nonpayment of the Indebtedness. Pledgor hereby waives and relinquishes any duty on the part of Secured Party to disclose any matter, fact or thing relating to the business, operations or condition of the Company now known or hereafter known by Secured Party.

SECTION 15. Continuing Security Interest; Transfer of Loan. This Agreement shall create a continuing security interest in the Pledged Collateral and shall (a) remain in full force and effect until the indefeasible payment in full of all Secured Obligations, (b) be binding upon Pledgor, its successors and assigns, and (c) inure, together with the rights and remedies of Secured Party hereunder, to the benefit of Secured Party and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (c), Secured Party may assign or otherwise transfer the Note to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Secured Party herein or otherwise. Upon the indefeasible payment in full of all Secured Obligations, the security interest granted hereby shall terminate and all rights to the Pledged Collateral shall revert to the Pledgor. Upon any such termination Secured Party will, at Pledgor's expense, execute and deliver to Pledgor such documents as Pledgor shall reasonably request to evidence such termination and Pledgor shall be entitled to the return, upon its request and its expense, against receipt and without recourse to Secured Party, of such of the Pledged Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof.

SECTION 16. Amendments; Etc. No amendment or waiver of any provision of this Agreement, or consent to any departure by Pledgor herefrom, shall in any event be effective unless the same shall be in writing and signed by Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

SECTION 17. Notices. All notices required or permitted hereunder shall be in writing and made by addressing the same to the party to whom directed at the following addresses by registered or certified mail, return receipt requested:

If to the Secured Party:      Capmark Bank  
   116 Welsh Road  
   Horsham, PA 19044-8015

with a copy to:                   Christopher J. Fritz, Esquire  
   Ballard Spahr Andrews & Ingersoll, LLP  
   300 East Lombard Street, 18th Floor  
   Baltimore, Maryland 21202

Pledgor:

Erickson Retirement Communities, LLC  
701 Maiden Choice Lane  
Baltimore, Maryland 21228

Any party may change the address to which notices are to be sent by a writing directed to the other party in the manner aforesaid. Unless otherwise specifically provided, all notices hereunder given by mail, as aforesaid, shall be deemed delivered on the third (3rd) business day after the date on which the same are deposited in a United States Post Office, general or branch, or an official mail depository, maintained by the U.S. Postal Service, enclosed in a registered or certified prepaid wrapper, with postage prepaid, addressed as above provided, except notice of change of address shall be deemed served when received.

SECTION 18. Failure or Indulgence Not Waiver; Remedies Cumulative. No failure or delay on the part of Secured Party in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

SECTION 19. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 20. Headings. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

SECTION 21. Governing Law; Terms. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF COLORADO, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, EXCEPT TO THE EXTENT THAT THE CODE PROVIDES THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR PLEDGED COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF COLORADO. Unless otherwise defined herein or in the Deed of Trust, terms used in Article 9 of the Uniform Commercial Code in the State of Colorado are used herein as therein defined.

SECTION 22. Consent to Jurisdiction and Service of Process. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST PLEDGOR ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF COLORADO, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT PLEDGOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE

NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT. Pledgor designates and appoints Jeffrey A. Jacobson, Esquire, whose address is 701 Maiden Choice Lane, Baltimore, Maryland 21228, and his successors in office as its agent to receive on its behalf service of all process in any such proceedings in any such court, such service hereby acknowledged by Pledgor to be effective and binding service in every respect. A copy of any such process so served shall be mailed by registered mail to Pledgor as provided in this Agreement; provided that, unless otherwise provided by applicable law, any failure to mail such copy shall not affect the validity of service of such process. If any agent appointed by Pledgor refuses to accept service, Pledgor hereby agrees that service of process sufficient for personal jurisdiction in any action against Pledgor in the State of Colorado may be made by registered or certified mail, return receipt requested, to Pledgor as provided in this Agreement, and Pledgor hereby acknowledges that such service shall be effective and binding in every respect. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of Secured Party to bring proceedings against Pledgor in the courts of any other jurisdiction.

SECTION 23. Waiver of Jury Trial. Pledgor hereby waives all rights to a jury in any action, counterclaim, or proceeding based upon, or related to, this Agreement or any of the Security Documents. This waiver applies to all claims against all parties to such actions and proceedings, including parties who are not parties to this Agreement. This waiver is knowingly, intentionally, and voluntarily made by Pledgor who acknowledges that it has been represented in the execution of this Agreement and in the making of this waiver by independent legal counsel, selected of its own free will, and that it has had the opportunity to discuss this waiver with counsel. Pledgor further acknowledges that it has read and understands the meaning and ramifications of this waiver provision.

SECTION 24. Counterparts. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

**[Signature Pages Follow]**

IN WITNESS WHEREOF, the Pledgor and Secured Party have caused this Agreement to be duly executed and delivered as of the date first written above.

WITNESS:

PLEDGOR

ERICKSON RETIREMENT COMMUNITIES, LLC

Cathy M. Thompson

By:

(Signature) (SEAL)

Name: Jeffrey A. Jacobson

Title: Executive Vice President

SECURED PARTY

CAPMARK BANK, a Utah industrial bank

By:

Malana C. Bryant (SEAL)

Malana C. Bryant  
Limited Signer

**IN WITNESS WHEREOF**, the Pledgor and Secured Party have caused this Agreement to be duly executed and delivered as of the date first written above.

WITNESS:

**PLEDGOR**

ERICKSON RETIREMENT COMMUNITIES, LLC

\_\_\_\_\_  
By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SECURED PARTY**

CAPMARK BANK, a Utah industrial bank

\_\_\_\_\_  
By: Malana C. Bryant (SEAL)  
Malana C. Bryant  
Authorized Signer

WHEN RECORDED, RETURN TO:

Christopher J. Fritz, Esquire  
Ballard Spahr Andrews & Ingersoll, LLP  
300 East Lombard Street, 18<sup>th</sup> Floor  
Baltimore, Maryland 21202

## DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (this "Deed of Trust") is made as of the 11th day of January, 2007, by WESTMINSTER CAMPUS, LLC, a Maryland limited liability company, with an address at c/o Erickson Retirement Communities, 701 Maiden Choice Lane, Baltimore, Maryland 21228 ("Grantor") to the PUBLIC TRUSTEE of the County of Adams, State of Colorado ("Trustee"), for the benefit of CAPMARK BANK, a Utah industrial bank, with an address at 116 Welsh Road, Horsham, Pennsylvania 19044-8015 (together with its successors and assigns, "Beneficiary").

### RECITALS

A. Grantor is justly indebted unto Beneficiary under that certain Deed of Trust Note dated as of even date herewith executed by Grantor and payable to the order of Beneficiary in the aggregate principal sum of \$9,724,009.00 (together with any and all subsequent amendments, modifications, renewals or extensions thereto from time to time, the "Note"). The purpose of the indebtedness evidenced by the Note is to provide funds for the acquisition of the fee simple estate in certain real property located in Adams County, Colorado.

B. It is a condition precedent to the making of the loan evidenced by the Note that the performance of all the Grantor's obligations to the Beneficiary now or hereafter contracted with respect thereto would be secured by the execution of this Deed of Trust. Whenever reference is made in this Deed of Trust to the payment of principal and/or interest as provided in the Note provided, such reference shall be deemed to refer not only to the payment of principal and/or interest, but also, if applicable, to the payment of fees and other charges as set forth in the Note.

### GRANTING CLAUSES

NOW, THEREFORE, for and in consideration of the Indebtedness, and to secure the prompt payment thereof, Grantor does hereby irrevocably grant, bargain, sell, convey, assign, transfer, mortgage, pledge and set over unto Trustee, in trust with power of sale, the Mortgaged Property (defined below) and grants to Beneficiary, its successors and assigns, a security interest

in, and to the Mortgaged Property:

TO SECURE to Beneficiary the repayment of the entire Indebtedness, at and in the manner stipulated herein, in the Note and in the other Security Documents (defined below), and the performance of the covenants and agreements of Grantor contained in the Security Documents (including, without limitation, the Obligations defined below), the Mortgaged Property and all parts thereof unto the Beneficiary, its successors and assigns forever, subject however to the terms and conditions herein;

PROVIDED, HOWEVER, that if the Grantor shall pay to the Beneficiary the entire Indebtedness, at the times and in the manner stipulated herein, in the Note and in the other Security Documents, all without any deduction or credit for taxes or other similar charges paid by the Grantor, and 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 Security Documents to be kept, performed, and observed, all without fraud or delay, then this Deed of Trust, 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.

All right, title and interest of Grantor in and to all extensions, improvements, betterments, renewals, substitutions and replacements of, and all additions and appurtenances to all or any portion of the Mortgaged Property, hereafter acquired by, or released to, Grantor or constructed, assembled or placed by Grantor on the Land (defined below), and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further deed of trust, conveyance, assignment or other act by Grantor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Grantor and specifically described in the granting clause hereof, but at any and all times Grantor will execute and deliver to Beneficiary any and all such further assurances, deeds of trust, conveyances or assignments thereof as Beneficiary may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Deed of Trust.

Until an Event of Default shall have occurred, Beneficiary shall permit Grantor to possess and enjoy the Mortgaged Property and to receive the rents, issues and profits thereof, subject to the provisions of the Note, this Deed of Trust and the other Security Documents.

The condition of these presents is such that if Grantor shall pay or cause to be paid the Indebtedness as and when the same shall become due and payable and shall observe, perform and discharge the Obligations, then Beneficiary shall cause the release of this Deed of Trust, at the cost of Grantor.



Grantor and Beneficiary further agree as follows:

## ARTICLE 1 DEFINITIONS

- 1.1 Definitions. Grantor and Beneficiary agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and the plural forms of such terms:
- (a) “Beneficiary” means the party hereinabove designated as such, together with its successors and assigns.
  - (b) “Business Day” means a day, other than Saturday or Sunday and legal holidays, when Beneficiary is open for business.
  - (c) “Closing Date” means the date of the Note and this Deed of Trust.
  - (d) “Event(s) of Default” means the events, circumstances, happenings or occurrences described in Article 8 of this Deed of Trust.
  - (e) “Grantor” means the party hereinabove designated as such, together with its successors and assigns.
  - (f) “Guarantor” means Erickson Retirement Communities, LLC, a Maryland limited liability company.
  - (g) “Impositions” means (i) all real estate taxes, personal property taxes and other taxes of every kind and character; (ii) all general and special assessments, levies, permit fees, inspection fees and license fees; (iii) all water and sewer rents and charges; (iv) all other public charges, taxes, assessments, fees, governmental and non-governmental charges, whether of a like or a different nature, to the extent any of the foregoing are imposed upon or assessed against Grantor or the Mortgaged Property or any part thereof or upon the revenues, rents, avails, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof; (v) any charges for any easement or agreement maintained for the benefit of the Mortgaged Property, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or character whatsoever, which at any time prior to or after the execution of this Deed of Trust may be assessed, levied or imposed upon the Mortgaged Property or the rent or income received therefrom, or any use or occupancy thereof; (vi) all charges for utilities, whether public or private, used or consumed upon, in or in connection with the Mortgaged Property; and (vii) any interest, costs or penalties with respect to any of the foregoing.

- (h) "Indebtedness" means (i) the principal of and the interest on and all other amounts, payments and premiums due on account of the Note and (ii) all other indebtedness of Grantor to Beneficiary payable pursuant to or secured by the Security Documents creating a lien or security interest securing payment of the Note.
- (i) "Land" means the fee simple estate in that certain real property described in Exhibit "A" attached hereto and by this reference made a part hereof.
- (j) "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, or any portion of the Mortgaged Property and all modifications, extensions or renewals thereof.
- (k) "Maturity Date" means the date stated in the Note for the payment of the entire unpaid Indebtedness, as more fully set forth in the Note.
- (l) "Mortgaged Property" means all of the right, title, interest, estate, claim or demand (either at law or in equity) of Grantor in and to the Land, together with:
- (i) all rights, privileges, tenements, hereditaments, rights-of-way, streets, roads, passages, ways, waters, watercourses, easements, privileges, appendages and appurtenances of the Land belonging or in any way appertaining thereto, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Grantor, and all right, title and interest of Grantor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any portion thereof;
  - (ii) all of Grantor's right, title and interest in and to all awards, payments and other compensation heretofore made or hereafter to be made by any municipal, state or federal authorities to the present or any subsequent owners of the Land, including any award or awards or settlements hereafter made resulting from condemnation proceedings or the taking of the Land or any part thereof, under the power of eminent domain or otherwise;
  - (iii) all Proceeds;
  - (iv) all Leases of the Land now or hereafter entered into and all right, title and interest of Grantor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the

terms of such lease or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms including, without limitation, the right to receive and collect the Rents thereunder;

- (v) all earnings, revenues, rents, issues, profits, avails and other income of and from the Land and all undisbursed proceeds of the loan evidenced by the Note and secured by this Deed of Trust;
  - (vi) all water and water rights, ditches and ditch rights, reservoir and reservoir rights, stock or interests in irrigation or ditch companies, minerals and mineral rights, now or hereafter used or useful in connection with, appurtenant to or related to the aforesaid property; and
  - (vii) all of the machines, apparatus, equipment (including, without limitation, embedded software), fixtures and articles of personal property now or hereafter located on the Land or in any improvements thereon, including without limitation all furniture, fixtures, equipment and building materials acquired with the proceeds of the loan evidenced by the Note.
- (m) "Note" means the Note described above.
  - (n) "Obligations" means any and all of the covenants, promises and other obligations (other than the Indebtedness) made or owing by Grantor or others to or due to Beneficiary pursuant to or as otherwise set forth in the Note or the Security Documents creating a lien or security interest securing payment of the Note.
  - (o) "Permitted Encumbrances" means (i) zoning laws and ordinances, easements, and similar restrictions to title which do not individually, or in the aggregate, materially detract from the value of the Mortgaged Property or impair the use thereof for the purposes intended or subject such use to the risk of being impaired, and (ii) those certain exceptions set forth in Schedule B, Part I of the policy of title insurance issued by Chicago Title Insurance Company to the Beneficiary on or about the date hereof.
  - (p) "Phase I Report" has the meaning given to that term in Section 4.17.
  - (q) "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.

- (r) “Rents” means all rent and other payments of whatever nature from time to time payable pursuant to the Leases.
- (s) “Security Documents” means this Deed of Trust, any payment guaranty, and any and all documents or instruments collateral thereto, and any and all other documents now or subsequently evidencing, securing or further evidencing or securing the payment of any portion of the Indebtedness or the performance of the Obligations, and any amendments thereto.
- (t) “Trustee” means the Public Trustee of the County of Adams, State of Colorado.

## ARTICLE 2

### SECURITY AGREEMENT; ASSIGNMENT OF LEASES AND RENTS

- 2.1 Uniform Commercial Code Security Agreement. This Deed of Trust is also a security agreement under the Uniform Commercial Code in effect in the State of Colorado from time to time (the “Code”) for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Code, whether acquired now or in the future, and all products and cash and non-cash Proceeds thereof (collectively, the “UCC Collateral”), and Grantor hereby grants to Beneficiary a security interest in the UCC Collateral. Grantor shall authorize, execute and/or deliver to Beneficiary promptly for the filing of such financing statements and any extensions, renewals and amendments thereof, of any termination statements and, upon Beneficiary’s commercially reasonable request, financing statements, continuation statements and amendments, in such form as Beneficiary may require to perfect or continue the perfection of this security interest. Grantor shall pay all filing costs and all costs and expenses of any record searches for financing statements that Beneficiary may require. Without the prior written consent of Beneficiary, Grantor shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. All financing statements and notices may describe Beneficiary’s collateral as all assets or all personal property of Borrower. If an Event of Default has occurred and is continuing, Beneficiary shall have the remedies of a secured party under the Code, in addition to all remedies provided by this Deed of Trust or existing under applicable law. In exercising any remedies, Beneficiary may exercise its remedies against the UCC Collateral separately or together and in any order, without in any way affecting the availability of Beneficiary’s other remedies hereunder and/or under applicable law.

## 2.2 Assignment of Rents and Leases.

### (a) Assignment of Rents; Appointment of Receiver; Mortgagee in Possession.

- (i) As part of the consideration for the Indebtedness, Grantor absolutely and unconditionally assigns and transfers to Beneficiary all Rents. It is the intention of Grantor to establish a present, absolute and irrevocable transfer and assignment to Beneficiary of all Rents and to authorize and empower Beneficiary to collect and receive all Rents without the necessity of further action on the part of Grantor. Promptly upon request by Beneficiary, Grantor agrees to execute and deliver such further assignments as Beneficiary may from time to time require in its commercially reasonable discretion. Grantor and Beneficiary intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the State of Colorado, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of Grantor that in this circumstance this Deed of Trust create and perfect a lien on Rents in favor of Beneficiary, which lien shall be effective as of the date of this Deed of Trust.
- (ii) After the occurrence of an Event of Default, Grantor authorizes Beneficiary to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Beneficiary. However, until the occurrence of an Event of Default, Beneficiary hereby grants to Grantor a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Beneficiary and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Security Documents, including deposits for Impositions, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, taxes and insurance premiums (to the extent not included in deposits for Impositions), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Grantor free and clear of, and released from, Beneficiary's rights with respect to Rents under this Deed of Trust. From and after the occurrence of an Event of Default, and

without the necessity of Beneficiary entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Grantor's license to collect Rents shall automatically terminate and Beneficiary shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Grantor shall pay to Beneficiary upon demand all Rents to which Beneficiary is entitled. At any time on or after the date of Beneficiary's demand for Rents, Beneficiary may give, and Grantor hereby irrevocably authorizes Beneficiary to give notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Beneficiary, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Grantor any amounts which are actually paid to Beneficiary in response to such a notice. Any such notice by Beneficiary shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Grantor shall not interfere with and shall cooperate with Beneficiary's collection of such Rents.

- (iii) Grantor represents and warrants to Beneficiary that Grantor has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note), that Grantor has not performed, and Grantor covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section, and that at the time of execution of this Deed of Trust there has been no anticipation or prepayment of any Rents for more than one month prior to the due dates of such Rents. Grantor shall not collect or accept payment of any Rents more than one month prior to the due dates of such Rents.
- (iv) If an Event of Default has occurred and is continuing, Beneficiary may, regardless of the adequacy of Beneficiary's security or the solvency of Grantor and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Beneficiary in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to subparagraph (a)(i) above, protecting the Mortgaged Property or the security of this Deed of Trust, or for such other purposes as

Beneficiary in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Beneficiary's security, without regard to Grantor's solvency and without the necessity of giving prior notice (oral or written) to Grantor, Beneficiary may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Beneficiary elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Grantor, by its execution of this Deed of Trust, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Beneficiary or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Beneficiary's entering upon and taking possession and control of the Mortgaged Property, Grantor shall surrender possession of the Mortgaged Property to Beneficiary or the receiver, as the case may be, and shall deliver to Beneficiary or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Beneficiary takes possession and control of the Mortgaged Property, Beneficiary may exclude Grantor and its representatives from the Mortgaged Property. Grantor acknowledges and agrees that the exercise by Beneficiary of any of the rights conferred under this Section shall not be construed to make Beneficiary a mortgagee-in-possession of the Mortgaged Property so long as Beneficiary has not itself entered into actual possession of the Land and Improvements.

- (v) If Beneficiary enters the Mortgaged Property, Beneficiary shall be liable to account only to Grantor and only for those Rents actually received. Beneficiary shall not be liable to Grantor, anyone claiming under or through Grantor or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Beneficiary under this Section, and Grantor hereby releases and discharges Beneficiary from any such liability to the fullest extent permitted by law.
- (vi) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Beneficiary for such purposes shall become an additional part of the Indebtedness as provided in Section 9.18.

- (vii) Any entering upon and taking of control of the Mortgaged Property by Beneficiary or the receiver, as the case may be, and any application of Rents as provided in this Deed of Trust shall not cure or waive any Event of Default or invalidate any other right or remedy of Beneficiary under applicable law or provided for in this Deed of Trust.

(b) Assignment of Leases; Leases Affecting the Mortgaged Property.

- (i) As part of the consideration for the Indebtedness, Grantor absolutely and unconditionally assigns and transfers to Beneficiary all of Grantor's right, title and interest in, to and under the Leases, including Grantor's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Grantor to establish a present, absolute and irrevocable transfer and assignment to Beneficiary of all of Grantor's right, title and interest in, to and under the Leases. Grantor and Beneficiary intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Grantor that in this circumstance this Deed of Trust create and perfect a lien on the Leases in favor of Beneficiary, which lien shall be effective as of the date of this Deed of Trust.
- (ii) Until Beneficiary gives notice to Grantor of Beneficiary's exercise of its rights under this Section, Grantor shall have all rights, power and authority granted to Grantor under any Lease (except as otherwise limited by this Section or any other provision of this Deed of Trust), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Grantor pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Grantor shall comply with and observe Grantor's obligations under all Leases, including Grantor's obligations pertaining to the maintenance and disposition of tenant security deposits.
- (iii) Grantor acknowledges and agrees that the exercise by Beneficiary, either directly or by a receiver, of any of the rights conferred under



this Section shall not be construed to make Beneficiary a mortgagee-in-possession of the Mortgaged Property so long as Beneficiary has not itself entered into actual possession of the Land and the Improvements. The acceptance by Beneficiary of the assignment of the Leases pursuant to subparagraph (b)(i) above shall not at any time or in any event obligate Beneficiary to take any action under this Deed of Trust or to expend any money or to incur any expenses. Beneficiary shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property except for any injury or damage caused by Beneficiary's gross negligence or willful misconduct. Prior to Beneficiary's actual entry into and taking possession of the Mortgaged Property, Beneficiary shall not (A) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (B) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (C) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Deed of Trust by Grantor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Grantor, prior to such actual entry and taking of possession.

- (iv) Upon delivery of notice by Beneficiary to Grantor of Beneficiary's exercise of Beneficiary's rights under this Section at any time after the occurrence of an Event of Default, and without the necessity of Beneficiary entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the State of Colorado, Beneficiary immediately shall have all rights, powers and authority granted to Grantor under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.
- (v) All Leases for residential dwelling units shall be on a form approved by Beneficiary in its commercially reasonable discretion.
- (vi) Grantor shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent and approval of Beneficiary. Grantor shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Deed of Trust) without the prior written consent of Beneficiary. Grantor shall, without request by Beneficiary, deliver an executed copy of each non-

residential Lease to Beneficiary promptly after such Lease is signed. All nonresidential Leases, including renewals or extensions of such Leases, shall specifically provide that such Leases are subordinate to the lien of this Deed of Trust and all such Leases may be terminated by Grantor and its successors and assigns upon thirty (30) days prior notice to the applicable lessee.

- (vii) Grantor shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than one month in advance.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES

Grantor hereby represents and warrants to Beneficiary as follows:

- 3.1 Organization, Power, etc. If Grantor is a corporation, partnership, limited liability company, or other legal entity, Grantor is fully authorized and permitted to execute and deliver this Deed of Trust and is and will continue to be (a) duly organized, validly existing and in good standing under the laws of the state of its organization and authorized to do business and in good standing in the jurisdiction in which the Mortgaged Property is located; (b) possessed of all requisite power and authority to own its properties and to carry on its business as now being conducted; (c) qualified to do business in every jurisdiction in which the nature of its business or its properties makes such qualification necessary; and (d) in compliance in all material respects with all laws, regulations, ordinances and orders of public authorities applicable to it.

- 3.2 Validity of Documents.

- (a) The execution, delivery and performance by Grantor of the Note and the Security Documents, and the borrowing evidenced by the Note (i) are within the powers of Grantor, (ii) have been duly authorized by all requisite action, (iii) have received all necessary governmental approvals, and (iv) will not violate any provision of law, any order of any court or any other governmental agency, the articles of organization or operating agreement of Grantor or any indenture, agreement or other instrument to which Grantor is a party or by which, to its knowledge, it or any of its properties is bound or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its properties or assets, except as contemplated by the provisions of the Security Documents. Grantor is not in default in the performance or observance of any covenants, conditions or provisions of any such agreement or instrument.

- (b) The Note and the Security Documents, when executed and delivered by Grantor and the other obligors named therein, if any, will constitute the legal, valid and binding obligations of Grantor and other obligors named therein, if any, in accordance with their respective terms. The liens, security interests and assignments created hereby will be valid, effective, properly perfected and enforceable liens, security interests and assignments.
- 3.3 Other Information. All other information, reports, papers and data given to Beneficiary with respect to Grantor are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Beneficiary a true and accurate knowledge of the subject matter.
- 3.4 Mortgaged Property. Grantor has good and indefeasible title in the fee simple estate to the Land free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever, other than the Permitted Encumbrances. This Deed of Trust is and will remain a valid enforceable first lien on the Mortgaged Property, subject only to the Permitted Encumbrances. Grantor has full power and lawful authority to subject the Mortgaged Property to the lien of this Deed of Trust in the manner and form herein contemplated. Grantor will preserve such title, will forever warrant and defend the same to Beneficiary and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.
- 3.5 Taxes. Grantor has filed all federal, state, county and municipal income tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by it and Grantor does not know of any basis for any additional assessment in respect of such taxes.
- 3.6 Litigation. There is not now pending against or affecting Grantor, nor to the knowledge of Grantor, is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency which if adversely determined would materially impair or affect its financial condition or operation.
- 3.7 Separate Tax Lot. The Land covered by this Deed of Trust is assessed for purposes of taxes such that the Land shall never become subject to the lien of any taxes levied or assessed against any real property other than the Land.
- 3.8 Leases. Other than Permitted Encumbrances, there are no Leases of the Mortgaged Property.

## ARTICLE 4 AFFIRMATIVE COVENANTS

Until the entire Indebtedness shall have been paid in full, Grantor hereby covenants and agrees as follows:

- 4.1 Existence. Grantor will do any and all things necessary to preserve and keep in full force and effect its existence, franchises, rights, privileges and trade names under the laws of the jurisdiction in which it was organized and in every jurisdiction in which the nature of its business or its properties make qualification to do business necessary.
- 4.2 Payment of Indebtedness and Performance of Obligations. Grantor covenants that it will promptly and duly pay and discharge the Indebtedness and perform and comply with the Obligations in strict accordance with the terms and conditions of the Note and the Security Documents and any other document or instrument evidencing or creating any of the Indebtedness or Obligations.
- 4.3 Compliance with Laws. Grantor will promptly, fully and faithfully comply with, conform to and obey all present and future laws, ordinances, rules, regulations, requirements, decrees, orders and notices of any governmental authority or agency (including, without limitation, any Board of Fire Underwriters) or court having or claiming jurisdiction, or similar body exercising similar functions, which may be applicable to it or to the Mortgaged Property, or any part thereof, or to the use or manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Mortgaged Property or any part thereof, whether or not such law, ordinance, rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property. Grantor will promptly notify Beneficiary of Grantor's receipt of notice from any court, agency or body referred to in this Section 4.3 relating to the rehabilitation or construction, use or occupancy of the Mortgaged Property or any part thereof, or which requires any action to be taken with respect to the Mortgaged Property or any part thereof or which could have a material, adverse effect on the Mortgaged Property or any part thereof.
- 4.4 Payment of Impositions.
  - (a) Following the occurrence of a default under the Security Documents, Grantor shall deposit with Beneficiary, at the time of each payment of an installment of interest or principal under the Note, an additional amount equal to one twelfth (1/12) of the entire sum required to discharge the Impositions (excluding, however, all charges for utilities, whether public or private, used or consumed upon, in or in connection with the Mortgaged Property) at least thirty (30) days prior to the due date thereof. The determination of the additional amount so payable, and of the fractional part thereof to be deposited with Beneficiary at the time of each payment

of an installment of interest or principal under the Note so that the aggregate of such deposits is sufficient to accommodate the purpose of this Section, shall be made by Beneficiary in its sole and absolute discretion, based upon the most recent billing statement.

- (b) Any amounts deposited with Beneficiary pursuant to the provisions of this Section shall not be, nor be deemed to be, trust funds, nor shall they operate to curtail or reduce the Indebtedness, and all such amounts may be commingled with the general funds of Beneficiary. Such amounts shall be held by Beneficiary without interest and applied to the payment of the obligations in respect to which amounts were deposited or, at the option of Beneficiary, to the payment of said obligations in such order or priority as Beneficiary shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one month prior to the due date of any of the aforementioned obligations the amount then on deposit therefor shall be insufficient for the payment of such obligation in full, Grantor within ten (10) days after demand shall deposit the amount of the deficiency with Beneficiary. Nothing contained in this Section shall be deemed to affect any right or remedy of Beneficiary under any provisions of this Deed of Trust or of any statute or rule of law to pay any such amount and to add the amount so paid, together with interest at the rate provided for in the Note, to the Indebtedness. Grantor hereby pledges and grants to Beneficiary a security interest in all amounts deposited with Beneficiary hereunder, as additional security for all of Borrower's obligations under the Security Documents.

4.5 Other Payments. Grantor will pay and discharge, from time to time when the same shall become due, all lawful charges, claims and demands of mechanics, materialmen, laborers and others assessed, levied, charged, imposed or filed against Grantor, the Mortgaged Property or any part thereof or the interest of Beneficiary therein or which may result in or permit the creation of a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income or profits of the Mortgaged Property or any part thereof, and Grantor will, in general, do or cause to be done everything necessary so that the lien hereof shall be fully preserved without cost or expense to Beneficiary.

4.6 Contest of Tax Assessments, etc. After prior written notice to Beneficiary, Grantor, at its own expense, may contest by appropriate legal proceedings, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of (a) any of the legal requirements referred to in Section 4.3; or (b) any Imposition; provided that (i) in the case of any unpaid Imposition such proceedings shall suspend the collection thereof from Grantor and from the Mortgaged Property, (ii) neither the Mortgaged Property nor any part thereof or interest thereunder will be in danger of being sold, forfeited, terminated, cancelled or lost, and (iii) Grantor shall have furnished such security

as may be required in the proceedings or as may be reasonably requested by Beneficiary.

4.7 Insurance. At all times while the Loan is outstanding, the Grantor will maintain, at its expense (and provide satisfactory evidence thereof to Beneficiary) the following insurance coverages and policies with respect to the Mortgaged Property, which coverages and policies must be acceptable to Beneficiary's insurance consultant in its sole discretion:

- (a) Liability Insurance. Grantor shall maintain the following insurance for personal injury, bodily injury, death, accident and property damage (collectively, the "Liability Insurance"): public liability insurance, including commercial general liability insurance and umbrella liability insurance. Liability Insurance shall provide coverage of at least \$15,000,000 per occurrence and \$15,000,000 in the annual aggregate, per location. If any Liability Insurance also covers other location(s) with a shared aggregate limit, then the minimum Liability Insurance shall be increased to \$25,000,000. All Liability Insurance shall name Beneficiary as an "Additional Insured" by an endorsement satisfactory to Beneficiary.
- (b) Other Insurance. Grantor shall maintain such other insurance coverage as may be deemed necessary at any time during the term of the Loan, which insurance shall be provided within such time periods as Beneficiary may determine, in each case, in its commercially reasonable discretion.
- (c) 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 Beneficiary in its reasonable discretion.
- (d) All insurance policies must be written by an insurance carrier with an A.M. Best rating of not less than A-. All liability insurance policies must name "Capmark Bank and its successors and/or assigns as their interests may appear" as additional insureds, and all property insurance policies must name "Capmark Bank and its successors and/or assigns" as the named mortgage holder entitled to all insurance proceeds. Beneficiary shall have the right, without Grantor'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.
- (e) Policies or binders, together with evidence of the above required insurance on ACORD Form 25 for liability insurance, or its equivalent, must be submitted to Beneficiary prior to setting the interest rate on the Loan.
- (f) 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 Deed of Trust, Grantor shall

pay such amount, except to the extent Beneficiary 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 Deed of Trust, 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 Beneficiary of such payment, which premiums shall not be paid by Grantor through or by any financing arrangement, shall be delivered by Grantor to Beneficiary at the address set forth in Section 11.2 hereof. Grantor shall not carry separate insurance, concurrent in kind or form or contributing in the event of loss, with any insurance required under this Section 4.7. If the limits of any policy required hereunder are reduced or eliminated due to a covered loss, Grantor shall pay the additional premium, if any, in order to have the original limits of insurance reinstated, or Grantor shall purchase new insurance in the same type and amount that existed immediately prior to the loss.

- (g) If Grantor fails to maintain and deliver to Beneficiary the original policies or certificates of insurance required by this Deed of Trust, Beneficiary may, at its option, procure such insurance and Grantor shall pay or, as the case may be, reimburse Beneficiary for, all premiums thereon promptly, upon demand by Beneficiary, with interest thereon at the Default Interest Rate from the date paid by Beneficiary to the date of repayment and such sum shall constitute a part of the Loan.
- (h) The insurance required by this Deed of Trust may, at the option of Grantor, be effected by blanket and/or umbrella policies issued to Grantor or to an affiliate of Grantor covering the Mortgaged Property and the properties of such affiliate; provided that, in each case, the policies otherwise comply with the provisions of this Deed of Trust and allocate to the Mortgaged Property, from time to time, the coverage specified by this Deed of Trust, 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 Deed of Trust shall be effected by any such blanket or umbrella policies, Grantor shall furnish to Beneficiary 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 Mortgaged Property.
- (i) Neither Beneficiary nor its agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Deed of Trust; it being understood that (a) Grantor 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 Beneficiary, its agents or employees, and (c) Grantor shall use its commercially reasonable efforts to procure from such insurance company

a waiver of subrogation rights against Beneficiary. If, however, such insurance policies do not provide for a waiver of subrogation rights against Beneficiary (whether because such a waiver is unavailable or otherwise), then Grantor 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 Beneficiary, its agents and employees, whether resulting from any damage to the Mortgaged Property, any liability claim in connection with the Mortgaged Property or otherwise. If any such insurance policy shall prohibit Grantor from waiving such claims, then Grantor must obtain from such insurance company a waiver of subrogation rights against Beneficiary.

- (j) If Grantor is in default of insurance requirements set forth in this Section 4.7, Grantor appoints Beneficiary as Grantor'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 Grantor into compliance herewith and, as limited above, at Beneficiary'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 Beneficiary be liable for failure to collect any amounts payable under any insurance policy.

- 4.8 Other Insurance. Grantor shall not apply for or take out separate insurance concurrent or substantially concurrent in form or contributing in the event of loss with that required to be maintained under Section 4.7 unless Beneficiary is designated thereon as a named insured or unless losses thereunder shall be payable to Beneficiary pursuant to a standard mortgagee's endorsement, as the case may be.
- 4.9 Performance of Other Agreements. Grantor will not violate any of the terms, provisions, covenants, agreements or restrictions and will timely comply with, and otherwise abide by and perform, all of the terms, agreements, obligations, covenants, restrictions and warranties binding upon Grantor under any license, permit, approval, deed, deed of trust, mortgage or similar instrument, lease, easement, right-of-way or other agreement with respect to or in any manner affecting the Mortgaged Property or any part thereof.
- 4.10 Further Assurances. Grantor shall execute and record, or file, all and every such further instrument, document, renewal, or assurance as may be requisite in the Beneficiary's sole opinion to (a) subject the Mortgaged Property to the lien of this Deed of Trust, (b) perfect, preserve or protect such lien, (c) secure the rights and remedies of the Beneficiary, or (d) better assure, assign and confirm to the Beneficiary the Leases and Rents. Grantor shall repay to the Beneficiary on demand all expenses, charges and taxes incurred in connection therewith.



- 4.11 Recordation. Grantor will pay all filing, registration and recording fees, and all other expenses incident to the execution and acknowledgment of this Deed of Trust, any deed of trust supplemental hereto or in modification hereof, any security instrument with respect to the Personalty, any instrument of further assurance and the like. Grantor will pay all federal, state, county and municipal transfer taxes, documentary taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and the execution, delivery, filing, registration and recordation of this Deed of Trust, any deed of trust supplemental hereto or in modification hereof, any security agreement with respect to the Personalty, any instrument of further assurance and the like.
- 4.12 Advances. Upon the occurrence of an Event of Default (as hereinafter defined), then Beneficiary, with or without notice to Grantor, may make advances to perform the same in its behalf, and all sums so advanced shall be a lien upon the Mortgaged Property and shall be secured hereby. Grantor will repay on demand all sums so advanced on its behalf with interest at the Default Rate, as defined in the Note. Any advance made by Beneficiary pursuant to this Section 4.12 shall not be construed to cure any default by Grantor in the performance of the covenants contained in this Deed of Trust.
- 4.13 Financial Information.
- (a) Grantor shall provide to Beneficiary, and cause Guarantor to provide to Beneficiary, at its address set forth in Section 11.2 the following financial statements and information on a continuing basis during the term of the loan evidenced by the Note:
    - (i) within one hundred twenty (120) days after the end of each fiscal year of Grantor, unaudited financial statements of Grantor with respect to the Mortgaged Property, prepared internally, which statements shall be prepared in accordance with GAAP, and shall include a balance sheet and a statement of income and expenses for the year then ended, certified by the chief financial officer of Grantor to be true and correct in all material respects; and
    - (ii) within forty-five (45) days after the end of each fiscal quarter of Grantor, unaudited quarterly financial statements of Grantor with respect to the Mortgaged Property, prepared internally, which statements shall be prepared in accordance with GAAP, and shall include a balance sheet and a statement of income and expenses, certified by the chief financial officer of Grantor to be true and correct in all material respects.
  - (b) Beneficiary reserves the right to require that the annual financial statements of Grantor be audited and prepared by a nationally recognized

accounting firm or independent certified public accountant acceptable to Beneficiary, at their respective sole cost and expense, if (i) an Event of Default exists, or (ii) if Beneficiary has reasonable grounds to believe that the unaudited financial statements do not accurately represent the financial condition of Grantor or Guarantor as the case may be.

- (c) Grantor will maintain or cause to be maintained full, complete, accurate and adequate records and books of account in accordance with generally accepted accounting principles consistently applied and, upon reasonable advance notice and during normal business hours, will permit Beneficiary and the duly authorized agents, attorneys and accountants of Beneficiary to visit and inspect the Mortgaged Property and to examine, copy and inspect its records and books of account at all reasonable times.
- (d) Beneficiary further reserves the right to require such other financial information of Grantor, in such form and at such other times (including monthly or more frequently) as Beneficiary shall reasonably deem necessary, and Grantor agrees promptly to provide or to cause to be provided, such information to Beneficiary. All financial statements must be in the form and detail as Beneficiary may from time to time reasonably request.

4.14 Estoppel Certificates. Within fifteen (15) days following any written request of Beneficiary so to do, Grantor will furnish to Beneficiary and to such other persons as Beneficiary may direct, a written certificate in form and substance satisfactory to Beneficiary, duly acknowledged, of the amount of the Indebtedness outstanding as of the date of such certificate, whether for principal, interest or otherwise, and stating in reasonable detail whether or not any credits, offsets or defenses exist with respect to the Indebtedness. If Beneficiary so requires, such certificate shall also contain a statement to the effect that Grantor knows of no Event of Default nor other default which, after notice or lapse of time or both, would constitute an Event of Default or other default, or, if an Event of Default or other default has occurred and remains uncured as of the date of such certificate, then such certificate shall contain a statement specifying the nature thereof, the time for which the same has continued and the action, if any, which Grantor has taken or proposes to take with respect thereto.

4.15 Escrows for Insurance and Related Matters.

- (a) Upon an Event of Default and upon written notice from Beneficiary to Grantor, Grantor shall deposit with Beneficiary, at the time of each payment of an installment of interest or principal under the Note, an additional amount sufficient to accumulate with the Beneficiary the entire sum required to pay the premiums on the insurance required pursuant to Section 4.7 hereof at least thirty (30) days prior to the due date thereof. The determination of the additional amount so payable, and of the

fractional part thereof to be deposited with Beneficiary at the time of each payment of an installment of interest or principal under the Note so that the aggregate of such deposits is sufficient to accommodate the purpose of this Section, shall be made by Beneficiary in its sole and absolute discretion, based upon the most recent billing statement.

- (b) Any amounts deposited with Beneficiary pursuant to the provisions of this Section shall not be, nor be deemed to be, trust funds, nor shall they operate to curtail or reduce the Indebtedness, and all such amounts may be commingled with the general funds of Beneficiary. Such amounts shall be held by Beneficiary without interest and applied to the payment of the obligations in respect to which amounts were deposited or, at the option of Beneficiary, to the payment of said obligations in such order or priority as Beneficiary shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one month prior to the due date of any of the aforementioned obligations the amount then on deposit therefor shall be insufficient for the payment of such obligation in full, Grantor within ten (10) days after demand shall deposit the amount of the deficiency with Beneficiary. Nothing contained in this Section shall be deemed to affect any right or remedy of Beneficiary under any provisions of this Deed of Trust or of any statute or rule of law to pay any such amount and to add the amount so paid, together with interest at the rate provided for in the Note, to the Indebtedness.

- 4.16 Indemnity; Hold Harmless. Grantor shall forever indemnify and save Beneficiary harmless from all commercially reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, and costs of a title search, continuation of abstract and preparation of survey, incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body in and to which Beneficiary may be or become a party by reason of this Deed of Trust, including, but not limited to, condemnation, bankruptcy, and administrative proceedings, as well as any other of the foregoing wherein proof of claim is by law required to be filed or in which it becomes necessary to defend or uphold the terms of this Deed of Trust, and all money paid or expended by Beneficiary in that regard, together with interest thereon from the day of such payment at the rate set forth in said Note shall be additional indebtedness secured hereby and, except as otherwise provided herein, shall be due and payable by Grantor upon written demand therefor provided by Beneficiary to Grantor.
- 4.17 Development on Mortgaged Property. Grantor shall obtain Beneficiary's prior written consent before any development of the Mortgaged Property may occur, which consent shall be subject to Beneficiary's commercially reasonable discretion.
- 4.18 Post-Closing Requirement. Grantor shall provide to Beneficiary, subject to Beneficiary's review and approval, in its sole discretion, the first right and

opportunity to provide revolving development and construction financing ("ADC Loan") to finance the initial development and construction of a one thousand five hundred (1,500) independent units and two hundred twenty-eight (228) "Renaissance Garden" units, as part of a continuing care retirement community to be situated on the Land ("First Right of Negotiation") provided the essential business terms offered by Beneficiary for the ADC Loan (i.e., pricing, loan amount, allowable draws and other terms and conditions) are reasonably consistent with other construction financing currently provided to Guarantor and/or its subsidiaries after adjustment for current market conditions. The First Right of Negotiation shall provide the Beneficiary with the first opportunity, but not the obligation, to provide the financing for the ADC Loan to Grantor before Grantor seeks financing from any other qualified lender. If Beneficiary provides the ADC Loan to Grantor, Beneficiary covenants and agrees to grant a credit to Grantor of fifty percent (50%) of any loan fee paid in conjunction with the Loan against the fees charged in conjunction with the ADC Loan.

## ARTICLE 5 NEGATIVE COVENANTS

Until the Indebtedness shall have been paid in full, Grantor covenants and agrees as follows:

- 5.1 Use Violations. Grantor will not use or occupy the Mortgaged Property or any part thereof, or knowingly allow the same to be used or occupied for any unlawful purpose, or in violation of any certificate of occupancy or other permit or certificate, or any law, ordinance or regulation, or any restrictions or reservations covering or affecting the use or occupancy thereof, or knowingly suffer any act to be done or any conditions to exist on the Mortgaged Property or any part thereof or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto.
- 5.2 Other Liens. Grantor will not, without the prior written consent of Beneficiary, which may be withheld in Beneficiary's sole discretion, create or permit to be created or to remain, any mortgage, pledge, lien, lease, encumbrance or charge on, security interest in the Mortgaged Property (other than the Permitted Encumbrances) whether prior or subordinate to the lien of this Deed of Trust and the other Security Documents.
- 5.3 Impairment of Security. Grantor will take no action which will in any manner impair the value of the Mortgaged Property or the security of this Deed of Trust.
- 5.4 No Transfer. Except as permitted in Article 6 below, Grantor shall not, voluntarily or by operation of law, sell, transfer, convey, or assign the equitable or legal title to or any interest in the Mortgaged Property nor shall any of the foregoing be sold, transferred, conveyed, encumbered or assigned, either

voluntarily or by operation of law, without in each instance the prior written consent of Beneficiary, which may be withheld in Beneficiary's sole discretion.

- 5.5 Other Obligations. Grantor will not, without the prior written consent of Beneficiary, which may be withheld in Beneficiary's sole discretion, incur any material financial obligation under any promissory note, indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Grantor is a party or by which Grantor or 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 this Deed of Trust and the other Security Documents.
- 5.6 Single Asset Entity. Grantor will not own any interests or property other than the Mortgaged Property.

#### **ARTICLE 6 PARTIAL RELEASE OF LIEN**

Notwithstanding anything contained herein, Grantor shall have the right, at any time and so long as no event of default has occurred and is continuing under the Security Documents, to request and receive from Beneficiary, or any other holder of the Note, a partial release or releases of the Land from the lien of this Deed of Trust, subject to and in accordance with the following:

- (a) After any sale of a portion of the Land to a third party unaffiliated to Grantor, Grantor shall be entitled to a partial release of the lien of the Deed of Trust, upon payment to Beneficiary of a release amount ("Release Amount") equal to 100% of the proceeds of such sale after deduction of normal and customary closing costs approved by Beneficiary in its reasonable discretion.
- (b) The rights of Grantor shall be exercised by written request to Beneficiary or the then current holder of the Note, accompanied by (i) a recordable request for partial release of Deed of Trust and partial release describing the Land to be released, and (ii) an agreement to provide at the closing of the Land to be released, the amount of money equal to the Release Amount for such Land to be released, together with any accrued unpaid interest thereon.
- (c) At the closing of the Land to be released, Beneficiary, or any other holder of the Note agrees to execute, acknowledge and deliver to Trustee such request for partial release of Deed of Trust and partial release of Land.
- (d) Any Release Amount payments shall be credited by Beneficiary to any principal curtailments due by Grantor under Section 2.2 of the Note.

## ARTICLE 7 CONDEMNATION

- 7.1 Condemnation Proceedings. Each of the following shall be referred to in this Article 7 as a "condemnation proceeding": (i) any taking (whether temporary or permanent or of title or possession) of the Mortgaged Property or any material part thereof or any interest therein as a result of, or by agreement or sale in anticipation or in lieu of, any exercise of the power of eminent domain or condemnation; or (ii) any such taking of any appurtenances to the Mortgaged Property or of vaults, areas, projections or the like outside the boundaries of the Mortgaged Property, or rights or interests in, below or above the ways, streets or alleys adjacent or proximate to the Mortgaged Property or rights or benefits of light, air, view or access to the Mortgaged Property or said ways, streets or alleys, or for the taking of space or rights therein or below or above the Mortgaged Property; or (iii) any damage to the Mortgaged Property or any material part thereof due to governmental or quasi-governmental action affecting, but not resulting in a taking of, the Mortgaged Property, including, by way of example and not by way of limitation, the changing of the grade of a street adjacent or proximate to the Mortgaged Property.
- 7.2 Assignment of Awards. Any and all awards, proceeds and payments heretofore or hereafter made in or as a result of any condemnation proceedings are hereby irrevocably assigned, absolutely and unconditionally, to Beneficiary.
- 7.3 Prosecution - Diligence. Grantor covenants and agrees to notify Beneficiary of the initiation of any condemnation proceeding, to initiate its claim or claims for any such award, proceeds or payment promptly, to prosecute the same diligently and in good faith and to cause the same to be collected and paid over to Beneficiary. Upon an Event of Default, Beneficiary shall have the right to initiate and prosecute such claims and to participate in any condemnation proceedings, and shall have the sole right, to collect and receipt for any such award, proceeds or payment. In any event, no settlement of a condemnation proceeding in excess of \$500,000.00 shall be made and no award, proceeds or payment in excess of \$500,000.00 accepted without the prior written consent of Beneficiary, and all such awards, proceeds and payments collected or received by Grantor shall be immediately paid over to Beneficiary.
- 7.4 Application of Proceeds. All awards, proceeds and payments received by Beneficiary in or as a result of any condemnation proceedings, after deducting all commercially reasonable costs and expenses, including reasonable attorneys' fees, incurred by Beneficiary in connection with collecting the same, shall be applied by Beneficiary as follows:

If the whole or any part of the Mortgaged Property shall be taken in condemnation proceedings, Beneficiary shall apply such award, proceeds or payment which it collects or receives pursuant to Section 7.3 in reduction of the outstanding principal balance of the Note, all accrued and

unpaid interest thereon, or any other of the Indebtedness whether or not then due. In the event that the amount of the awards, proceeds or payments received by Beneficiary is insufficient to pay the then entire unpaid principal balance of the Note, together with all accrued and unpaid interest thereon, and all other of the Indebtedness then due to Beneficiary from Grantor, Grantor shall, within ten (10) days after the application of the award, proceeds or payment as aforesaid, pay such deficiency to Beneficiary.

## **ARTICLE 8 EVENTS OF DEFAULT**

The term "Event(s) of Default," as used in this Deed of Trust, shall mean the occurrence or happening, from time to time, of any one or more of the following:

- 8.1 Payment of Indebtedness. If Grantor fails in making any payment of any of the Indebtedness within five (5) days after Grantor's receipt of written notice from Holder that such payment is due, or on the Maturity Date (as defined in the Note).
- 8.2 Performance of Obligations. If Grantor shall default in the due observance or performance of any of the Obligations other than payment of money and such default shall continue for a period of thirty (30) days, except as otherwise provided herein or in the other Security Documents, after written notice thereof from Beneficiary to Grantor (or if such default be such that it cannot be cured within thirty (30) days, it shall not be an Event of Default if, in the reasonable opinion of Beneficiary, Grantor is diligently taking corrective action to cure such default so that such default can be completely corrected within sixty (60) days after the occurrence of such default and such default will not impair the security for the Indebtedness); provided, however, that no such notice or grace period shall be provided for any default specifically referred to in the other Sections of this Article 8, except such notice or grace period, if any, otherwise specifically provided for in such other Sections.
- 8.3 False Representation. If any representation, warranty or financial statement made or given by Grantor, any guarantor of all or any portion of the Indebtedness, or others on behalf of Grantor, under or pursuant to the Note or the Security Documents shall prove to have been false or misleading in any material respect as of the date on which such representation, warranty or financial statement was made or given.
- 8.4 Appointment of Receiver. If by the order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Mortgaged Property or any part thereof, or of Grantor, or of any other properties or assets of Grantor, shall be appointed and such order shall be consented to or shall not be discharged or dismissed within sixty (60) days after such appointment.
- 8.5 Voluntary Bankruptcy. If Grantor shall file a petition in bankruptcy or for an arrangement or for reorganization pursuant to the Federal Bankruptcy Code or

any similar law, federal or state, or if, by decree of a court of competent jurisdiction, Grantor shall be adjudicated a bankrupt, or be declared insolvent, or if Grantor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall seek or consent to the appointment of a receiver or receivers of all or any part of its properties or assets.

- 8.6 Involuntary Bankruptcy. If any of the creditors of Grantor or any other person shall file a petition in bankruptcy or for the appointment of a receiver or for similar relief against Grantor or for reorganization of Grantor pursuant to the Federal Bankruptcy Code or any similar law, federal or state, and if such petition shall be consented to by Grantor or not be discharged or dismissed within ninety (90) days after the date on which such petition was filed.
- 8.7 Judgments. If final judgment for the payment of money shall be rendered against Grantor in excess of \$100,000.00 and Grantor shall not discharge the same or cause it to be discharged within thirty (30) days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution pending such appeal.
- 8.8 Executions or Attachments. If any writ or process of execution or attachment is issued against Grantor or any properties or assets of Grantor, including but not limited to the Mortgaged Property or any part thereof, and the levy or service or any such writ is not dismissed and/or bonded over to the satisfaction of Beneficiary within thirty (30) days after entry of such order.
- 8.9 Liens. If any lien (mechanic's, municipal or other), encumbrance, notice of lien, levy or any other adverse charge against the Mortgaged Property or any portion thereof is filed or entered and is not discharged or affirmatively insured over (whether by Grantor's bonding or otherwise) by Chicago Title Insurance Company within thirty (30) days following Grantor's receipt of actual notice of the date of such filing or entry.
- 8.10 Dissolution. If Grantor shall dissolve or liquidate, and such dissolution or liquidation is not in connection with a reorganization, merger or consolidation approved in writing by Beneficiary.
- 8.11 Guarantors. If any of the events enumerated in Sections 8.4, 8.5, 8.6, 8.7 or 8.8 hereof shall occur (subject to the applicable notice and cure provisions, if any, set forth in the guaranty executed by such guarantor or surety for the benefit of the Beneficiary) with respect to the Guarantor or any other guarantor or surety of the payment of all or any part of the Indebtedness or of the performance of any of the Obligations.



- 8.12 Illegality. After the date of this Deed of Trust, if any court of competent jurisdiction shall render a final, non-appealable decision that any undertaking of Grantor as set forth in this Deed of Trust is illegal or legally inoperative.
- 8.13 Foreclosure of Other Liens. If the holder of a junior, subordinate or senior mortgage, deed of trust or other lien on the Mortgaged Property (without hereby implying Beneficiary's consent to any such junior, subordinate or senior mortgage, deed of trust or other lien) commences foreclosure or other proceedings for the enforcement of its remedies thereunder, and if such default shall continue for a period of ten (10) days following the commencement of such proceedings, or if any default should occur and remain uncured beyond any applicable grace period (whether or not foreclosure proceedings or other similar proceedings are commenced) with respect to the payment of any indebtedness secured by a mortgage, deed of trust or other lien on the Mortgaged Property or the performance of any covenant contained therein.
- 8.14 Transfer of Mortgaged Property or Interest in Grantor. If, except as permitted under Article 6 hereof, Grantor shall, voluntarily or by operation of law, sell, transfer, convey, assign or consent to the sale, transfer, conveyance or assignment of the equitable or legal title to or any interest in the Mortgaged Property or any interest in the Grantor or if any of the foregoing is sold, transferred, conveyed, encumbered or assigned, either voluntarily or by operation of law, without in each instance the prior written consent of the Beneficiary.
- 8.15 Material Adverse Change in Financial Condition. The occurrence of any materially adverse change in the financial condition or prospects of Grantor or Guarantor, or the existence of any other condition which, in Beneficiary's reasonable determination, constitutes a material impairment of any such person's or entity's ability to perform its respective obligations under the Security Documents, which is not remedied within 30 days after written notice.
- 8.16 Violation of Financial Covenant. The failure of Guarantor to comply with its liquidity requirements more fully described in Section 7 of the Guaranty.

## ARTICLE 9 DEFAULT AND FORECLOSURE

- 9.1 Remedies. If an Event of Default shall occur, then Beneficiary may, at the option of Beneficiary, exercise any one or more of the following remedies without notice (unless notice is required by applicable statute or otherwise set forth herein or in the other Security Documents):
- (a) Acceleration. Declare the entire unpaid balance of the Indebtedness to be immediately due and payable in full, without further notice or demand (each of which is hereby expressly waived by Grantor) whereupon the

same shall become immediately due and payable, anything in the Note or the Security Documents to the contrary notwithstanding.

- (b) Foreclosure by Power of Sale. Without limiting the generality of the foregoing or the provisions set forth below, if an Event of Default occurs, Beneficiary may at any time and from time to time:
- (i) Enter, take possession of and sell (either by judicial action or through Trustee) or otherwise dispose of all or any part of the Mortgaged Property and in connection therewith elect to sell all of the Mortgaged Property as if it were real property in accordance with subsection (ii) below, or elect to sell or otherwise dispose of any part of the Property which is personal property in accordance with subsection (iii) below, separate and apart from the sale of real property.
  - (ii) Elect, without further notice, to file with the Trustee, a Notice of Election and Demand for Sale, in writing, as provided by applicable law. After such filing, the Trustee may lawfully foreclose and will foreclose the lien of this Deed of Trust, and sell and dispose of the Mortgaged Property en masse or in separate parcels (as Beneficiary may elect) and all the right, title, and interest of the Grantor therein, at a public auction at any place then authorized by applicable law as may be specified in the notice of such sale, for the highest and best price (the "Trustee's Sale"), four (4) weeks' public notice having previously been given of the time and place of such sale by advertisement, weekly, in a newspaper of general circulation at the time published in Adams County, Colorado, or upon such other notice as may then be required by applicable law. A copy of the notice of sale will be given to Grantor at its address given in this Deed of Trust, and to such person or persons appearing to have acquired a subsequent record interest in the Mortgaged Property at the address given in the recorded instrument evidencing such interest, any such notice to be given in accordance with applicable law, provided, that where only the county and state are given as the address then such notice will be mailed to the county seat. Trustee will then make and give to the purchaser or purchasers of such Mortgaged Property at such sale a certificate or certificates in writing describing such Mortgaged Property purchased, and the sum or sums paid therefor, and the time when the purchaser or purchasers (or other persons entitled thereto) will be entitled to a deed or deeds therefor, unless the same will be redeemed as provided by applicable law, and Trustee will, upon demand by the person or persons holding the certificate or certificates of purchase, when the demand is made, or upon demand by the person entitled to a deed to and for the

Mortgaged Property purchased, at the time such demand is made (the time for redemption having expired) make and execute to such person or persons a deed or deeds to the Mortgaged Property purchased, which shall be in the ordinary form of a conveyance, and will be signed, acknowledged, and delivered by Trustee, as grantor, and will convey and quitclaim to the person or persons entitled to the deed, as grantee, the Mortgaged Property purchased as aforesaid, and all the right, title, interest, benefit, and equity of redemption of Grantor and its successors and assigns, and shall recite the sum for which the Mortgaged Property was sold and shall refer to the power of sale herein contained, and to the sale or sales made by virtue thereof. In case of an assignment of such certificate or certificates of purchase or in the case of redemption of such Mortgaged Property by a subsequent encumbrancer, such assignment or redemption will also be referred to in such deed or deeds, but the notice of sale need not be set out in such deed or deeds. Trustee will, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, and costs of making the sale, first pay to Beneficiary all moneys advanced by Beneficiary for insurance, repairs, appraisals, maintenance, inspection and testing fees, receivers' and management fees, leasing and sales commissions, advertising costs and expenses, taxes and assessments, environmental audits, environmental studies and reports, environmental tests and remediation costs, surveys, engineering studies and reports, engineering fees and expenses, soils tests, space planning costs and expenses, contractors' fees, expert witness fees and expenses, copying charges, costs for title searches and examinations, title insurance premiums and expenses, filing and recording fees, all costs, fees and expenses incurred by Beneficiary to maintain, preserve and protect the Mortgaged Property, attorneys' fees, and any other costs or fees authorized in the Note or the Security Documents or by statute, with interest thereon at the Default Rate (as provided in the Note), from the date incurred until paid, and then pay to the Beneficiary the principal, interest, and all other amounts, payments and premiums due on account of the Note, any prepayment premium provided for in the Note, and any other sums due on the Note or under the Security Documents according to the tenor and effect thereof, rendering the overplus, if any, to Grantor and its successors or assigns. Such sale or sales and said deed or deeds so made will be a perpetual bar, both in law and equity, against Grantor and its successors and assigns, and all other persons claiming the Mortgaged Property, or any part thereof, by, through, from, or under Grantor. The holder of the Note may purchase the Mortgaged Property or any part thereof. It will not be obligatory upon the purchaser or purchasers

at any such sale to see to the application of the purchase money. Nothing herein dealing with foreclosure procedures or specifying particular actions to be taken by Beneficiary or by Trustee will be deemed to contradict or add to the requirements and procedures (now or hereafter existing) of Colorado law applicable to this Deed of Trust at the time of foreclosure, and any such conflict or inconsistency shall be resolved in favor of Colorado law.

(iii) Should the Beneficiary elect to cause any part of the Mortgaged Property to be sold or otherwise disposed of as personal property as permitted by subsection (ii) above, such Mortgaged Property may be sold or otherwise disposed of in any manner now or hereafter permitted by the Code or other applicable law, and the Beneficiary will have, and may exercise, all of the rights, remedies and powers of a secured party under such Code or law. Grantor agrees that commercial reasonableness and good faith required Beneficiary to give to Grantor no more than then (10) days' prior written notice of any public sale or other disposition of any part of the Mortgaged Property to be sold pursuant to this subpart or of the time after which any private sale or other disposition of such Mortgaged Property is to be made.

(c) Grantor as Tenant Holding Over. In the event of any such foreclosure sale, Grantor (if Grantor 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.

(d) Other Remedies. During the continuance of any Event of Default, Beneficiary may take such other and additional steps to protect and enforce its rights, whether by action, suit or proceeding in equity or at law, or in aid of any power granted in the Note or the Security Documents, or for the enforcement of any other appropriate legal or equitable remedy, or otherwise, as Beneficiary may elect.

9.2 Other Security. Beneficiary may resort to any other security held by Beneficiary on behalf of and/or for the account of Grantor for the payment of the Indebtedness or the performance of the Obligations in such order and manner as Beneficiary may elect and no such action by Beneficiary shall operate to modify or terminate any of the rights, powers or remedies contained in the Note or the Security Documents.

9.3 Adjournment of Sale. Beneficiary or, as permitted by law, Trustee, may adjourn from time to time any sale by Trustee to be made under or by virtue of this Deed of Trust by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any court,

Trustee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

- 9.4 Conveyance by Trustee. Upon the termination of any sale or sales made by Trustee or Beneficiary under or by virtue of this Article, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Trustee or an officer of the court empowered so to do, shall execute and deliver to the purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all of Grantor's estate, right, title and interest in and to the properties and rights sold. Any such sale or sales made under or by virtue of this Article, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Grantor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Grantor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Grantor.
- 9.5 Acceleration Upon Sale. In the event of any sale made under or by virtue of this Article, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the entire Indebtedness, if not previously due and payable, and all other sums required to be paid by Grantor pursuant to the Note and the Security Documents, shall immediately become due and payable in full, anything in the Note or the Security Documents to the contrary notwithstanding.
- 9.6 Purchase by Beneficiary. In the event of any sale made under or by virtue of this Article, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary may bid for and acquire the Mortgaged Property or any part thereof.
- 9.7 Separate Sales. In the event of any sale, whether made under or by virtue of this Article, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary or Trustee, as applicable, may sell the Mortgaged Property or any part thereof in one parcel, as an entirety or in such parcels and in such manner or order as Beneficiary or Trustee, as applicable, in the sole exercise of its or their discretion, may elect. The power of sale set forth above shall not be exhausted by any one or more sales as to any part of the Mortgaged Property which shall not have been sold (and such power of sale may be exercised from time to time and as many times as Beneficiary may deem necessary until all of the Mortgaged Property has been duly sold and all obligations secured hereby have been fully paid) nor by any sale which is not completed or which is defective in Beneficiary's opinion, until the Indebtedness shall have been paid in full.

- 9.8 Rescission of Election to Accelerate. In the event Beneficiary shall elect to accelerate the maturity of the Indebtedness pursuant to the provisions of this Deed of Trust, such election may be rescinded by written acknowledgment to that effect by Beneficiary; provided, however, that the acceptance of one or more partial payments on account of the Indebtedness shall not alone affect or rescind such election.
- 9.9 Recovery of Judgment. During the continuance of any Event of Default Beneficiary shall be entitled and empowered to institute such actions or proceedings at law or in equity as it may consider advisable for the collection of the entire unpaid balance of the Indebtedness, and may prosecute any such actions or proceedings to judgment or final decree, and may enforce any such judgment or final decree against Grantor in any manner provided by law. Beneficiary shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceeding for the enforcement of any remedies provided for in the Note or the Security Documents and the right of Beneficiary to recover any judgment as aforesaid shall not be affected by any sale hereunder, or the entry of a decree for the sale of the Mortgaged Property or any part thereof, or by the enforcement of the provisions of the Note and the Security Documents or the foreclosure of the lien hereof. In the event of a sale of the Mortgaged Property, and of the application of the proceeds of sale, as in this Deed of Trust provided, to the payment of the Indebtedness, Beneficiary shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon the Indebtedness and shall be entitled to recover judgment for any portion of the Indebtedness remaining unpaid, with interest. In case of proceedings against Grantor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, then Beneficiary shall be entitled to prove the whole amount due on account of the Indebtedness, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property; provided, however, that in no case shall Beneficiary receive a greater amount than such amount due on account of the Indebtedness from the aggregate amount of the proceeds of the sale of the Mortgaged Property and the distribution from the estate of Grantor. No recovery of any judgment by Beneficiary and no levy of an execution under any judgment upon the Mortgaged Property or upon any other properties or assets of Grantor shall affect, in any manner or to any extent, the lien of this Deed of Trust upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Beneficiary hereunder, but such liens, rights, powers and remedies of Beneficiary shall continue unimpaired as before.
- 9.10 Discontinuance of Proceedings. In the event Beneficiary shall commence any proceeding to enforce any right, power or remedy under the Note or the Security Documents and such proceedings shall be discontinued or abandoned for any reason then in every such event the parties shall be restored to their former positions and rights, powers and remedies of Beneficiary shall continue.

- 9.11 No Condition Precedent to Exercise of Remedies. Neither Grantor nor any guarantor of the payment of all or any part of the Indebtedness or the performance of all or any of the Obligations shall be relieved of any obligation by reason of the failure of Beneficiary to comply with any request of Grantor or of any other person to take action to foreclose on this Deed of Trust or otherwise to enforce any provision of the Note or the Security Documents, or by reason of the release, regardless of consideration, of all or any part of the Mortgaged Property, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Beneficiary extending the time of payments or modifying the terms of the Note or the Security Documents without first having obtained the consent of Grantor or such guarantor; and in the latter event, Grantor and all guarantors shall continue to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Beneficiary.
- 9.12 Remedies Cumulative and Concurrent. No remedy herein conferred upon or reserved to Beneficiary is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given by this Deed of Trust to Beneficiary shall be concurrent and may be pursued separately, successively or together against Grantor, any guarantor of the payment of all or any part of the Indebtedness and/or of the Obligations, or any one or more of them; and every right, power and remedy given by this Deed of Trust to Beneficiary may be exercised from time to time as often as may be deemed expedient by Beneficiary.
- 9.13 Strict Performance. No delay or omission of Beneficiary to exercise any right, power or remedy accruing upon the happening of an Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or any acquiescence therein. No delay or omission on the part of Beneficiary to exercise any option for acceleration of the maturity of the Indebtedness, or for foreclosure following any Event of Default as aforesaid, or any other option granted to Beneficiary hereunder in any one or more instances, or the acceptance by Beneficiary of any partial payment or payments on account of the Indebtedness, shall constitute a waiver of any such Event of Default and each such option shall remain continuously in full force and effect.
- 9.14 Application of Proceeds. The proceeds of any sale made under or by virtue of this Article, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, together with any other sums which may then be held by Beneficiary pursuant to this Deed of Trust, whether under the provisions of this Article or otherwise, shall be applied as follows:

- (a) First, to the payment of all commercially reasonable costs and expenses of such sale, and of any judicial or other proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Beneficiary under this Deed of Trust, and all taxes and assessments due upon the Mortgaged Property at the time of such sale and to discharge any other lien prior to this Deed of Trust, except any taxes, assessments or other liens subject to which the Mortgaged Property shall have been sold.
- (b) Second, to the payment of whatever may then remain unpaid on account of the Indebtedness, with interest thereon to the date of payment or as otherwise provided in the Note and the Security Documents.
- (c) Third, to the payment of any other sums required to be paid by Grantor pursuant to any provisions of the Note or the Security Documents, including, without limitation, all expenses, liabilities and advances made or incurred by Beneficiary in connection with the enforcement thereof together with interest on all such advances.
- (d) Fourth, the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

- 9.15 Application of Purchase Money. In the event of any sale made under or by virtue of this Article, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the receipt by Beneficiary or Trustee of the payment of the purchase money shall be full and sufficient discharge of any purchaser of the Mortgaged Property and no such purchaser, after paying such purchase money and receiving such a receipt, shall be bound or liable to see to the application of such purchase money.
- 9.16 Documents Effecting Sale. In connection with any sale under this Deed of Trust, Beneficiary may procure such title reports, surveys, tax histories, environmental assessments and appraisals as it deems necessary, and all costs and expenses incurred in connection therewith shall be payable by the Grantor or from the proceeds of the sale.
- 9.17 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Grantor, its creditors or its properties, Beneficiary, 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 Beneficiary allowed in such proceedings for the entire amount due and payable by Grantor under this Deed of Trust at the date of the institution of such proceedings and for any additional amount which may become due and payable by Grantor hereunder after such date.



- 9.18 Protection of Beneficiary's Security. If Grantor fails to perform any of its obligations under this Deed of Trust or any other Security Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Beneficiary's security or Beneficiary's rights under this Deed of Trust, 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 Beneficiary at Beneficiary's option may make such appearances, disburse such sums and take such actions as Beneficiary reasonably deems necessary to perform such obligations of Grantor and to protect Beneficiary's interest, including (i) disbursement of reasonable 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 hereunder, and (iv) payment of Impositions.

Any amounts disbursed by Beneficiary under this Section 9.18, or under any other provision of this Deed of Trust, or under any of the other Security Documents, that treats such disbursement as being made under this Section 9.18, shall be added to, and become part of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "Default Rate", as defined in the Note.

Nothing in this Section 9.18 shall require Beneficiary to incur any expense or take any action.

#### **ARTICLE 10 ASSIGNMENT OF PROCEEDS - CONTRACTS OF SALE**

- 10.1 Assignment. In order to further secure the payment of the Indebtedness and the performance and discharge of the Obligations, Grantor does hereby grant, assign, transfer and set over unto Beneficiary all of the right, title, interest and estate of Grantor in and to any and all contracts for the sale of the whole or any part of the Mortgaged Property (individually "Sales Contract" and collectively "Sales Contracts") now or hereafter entered into, including, without limitation, all of the proceeds thereof and any funds deposited thereunder to secure performance by the purchasers of their obligations thereunder and including, again without limitation, the right at the election of Beneficiary upon the happening of an Event of Default to receive and collect all such proceeds.

In furtherance of the foregoing assignment, Grantor irrevocably authorizes Beneficiary, by and through its employees and agents, at its option upon the happening of an Event of Default, to collect, in the name of Grantor or in its own name as assignee, the proceeds of any such Sales Contract; and, to this end, Grantor further agrees that it will facilitate in every reasonable way the collection by Beneficiary of such proceeds, and will, at the written request of Beneficiary execute a written notice and deliver the same to each purchaser directing the

purchaser to pay the proceeds to Beneficiary. In no event shall Beneficiary be accountable for more monies than it actually receives from the Mortgaged Property, nor shall Beneficiary be liable for any failure to collect the proceeds of sale; and the right to determine the method of collection and the extent to which the enforcement of collection shall be prosecuted is reserved to the sole discretion of Beneficiary.

- 10.2 Performance Under Sales Contracts. Except as Beneficiary may otherwise agree in writing, Grantor at its cost and expense will use commercially reasonable efforts to or cause to be enforced or secured, the performance of each and every obligation and undertaking of the respective purchasers under any Sales Contracts and will appear in and defend at its cost and expense any action or proceeding arising under or in any manner connected with such Sales Contracts, or the obligations and undertakings of any purchasers thereunder. Grantor at its cost and expense will at all times promptly and faithfully perform, or cause to be performed, each and every obligation and undertaking contained in any Sales Contract required by the terms thereof to be performed by Grantor.
- 10.3 Assignments to Third Parties. Grantor hereby covenants and warrants to Beneficiary that it has executed no prior assignment or pledge of the proceeds of the sale of the Mortgaged Property, nor any prior assignment or pledge of its interest in any Sales Contract. Grantor will not, without the prior written consent of Beneficiary, execute any assignment or pledge of the proceeds of the sale of the Mortgaged Property nor any assignment or pledge of its interest in any Sales Contract, whether prior or subordinate to the lien of the Security Documents, other than in the Security Documents.
- 10.4 Limitations. Nothing contained in this Article shall be construed as consent by Beneficiary to any conveyance, sale, assignment or transfer of the Mortgaged Property or any part thereof.

## **ARTICLE 11 MISCELLANEOUS**

- 11.1 No Warranty by Beneficiary. By accepting or approving anything required to be observed, performed or fulfilled by Grantor, or to be given to Beneficiary pursuant to the Note or the Security Documents, including (but not limited to) any member's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Beneficiary shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term or provision or constitute any warranty or representation with respect thereto by Beneficiary.
- 11.2 Notices. All notices, demands, requests and other communications required pursuant to the provisions of the Note and the Security Documents shall be in writing and shall be deemed to have been properly given or served for all

purposes when presented personally or on the date of the postmark if sent by United States Certified Mail - Return Receipt Requested, postage prepaid, to the respective addresses as follows:

(a) If to Grantor, then to it at:

c/o Erickson Retirement Communities  
701 Maiden Choice Lane  
Baltimore, Maryland 21228  
Attn: General Counsel

(b) If to Beneficiary, then to it at:

Capmark Bank  
116 Welsh Road  
Horsham, Pennsylvania 19044  
Attn: Servicing Department

with a copy to:

Ballard Spahr Andrews & Ingersoll, LLP  
300 East Lombard Street, 18<sup>th</sup> Floor  
Baltimore, Maryland 21202  
Attn: Christopher J. Fritz, Esquire

Any of the parties may designate a change of address by notice in writing to the other parties. Whenever in this Deed of Trust the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person or person entitled to receive such notice.

- 11.3 No Partnership - Third Parties. Nothing contained in the Note or the Security Documents shall be construed in a manner to create any relationship between Grantor and Beneficiary other than the relationship of borrower and lender, and Grantor and Beneficiary shall not be considered partners or co-venturers for any purpose. The terms and provisions of the Note and the Security Documents are for the benefit of Grantor and Beneficiary, their respective successors, assigns, endorsees and transferees and all persons claiming under or through them (including, without limiting the generality of the foregoing, any participant of Beneficiary), and no other person shall have any right or cause of action on account thereof.
- 11.4 Severability. In the event any one or more of the provisions of the Note or the Security Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event any one or more of the provisions of the Note or the Security Documents operate or would prospectively operate to invalidate this Deed of Trust, then and in either of those

events, at the option of Beneficiary, such provision or provisions only shall be held for naught and shall not affect any other provision of the Note or the Security Documents or the validity of the remaining Obligations and the remaining provisions of the Note and the Security Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

- 11.5 Successors and Assigns. All of the grants, covenants, terms, provisions and conditions of the Note and the Security Documents shall run with and bind the Mortgaged Property and shall apply, bind and inure to the benefit of, the successors and assigns of Grantor, and the endorsees, transferees, successors and assigns of Beneficiary, and all persons claiming under or through any of them.
- 11.6 Modification - Waiver. None of the terms or provisions of the Note or the Security Documents may be changed, waived, modified, discharged or terminated except by instrument in writing executed by the party or parties against which enforcement of the change, waiver, modification, discharge or termination is asserted. None of the terms or provisions of the Note or the Security Documents shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.
- 11.7 Reliance. In the event Beneficiary shall elect, pursuant to the provisions of this Deed of Trust, to make any advances for the account of Grantor or for the protection of the validity, security or priority of the lien hereof, including, without limitation, any advance made pursuant to the provisions of Section 4.12 of Article 4 of this Deed of Trust, then and in any of those events Beneficiary shall be entitled to rely on any statement, bill or assessment of any public or quasi-public body after reasonable inquiry into the accuracy or validity thereof and, further, Beneficiary shall reasonably inquire into the validity of any apparent or threatened adverse claim of title, lien, encumbrance, claim or charge before making an advance to prevent or remove the same.
- 11.8 Captions and Headings. The captions and headings contained in this Deed of Trust are included herein for convenience of reference only and shall not be considered a part hereof and are not in any way intended to limit or enlarge the terms hereof.
- 11.9 Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.
- 11.10 Warranty. Grantor warrants specially the title to the Mortgaged Property, subject to the Permitted Encumbrances.

- 11.11 Applicable Law. The Note and the Security Documents shall be governed by and construed, interpreted and enforced in accordance with and pursuant to the laws of the State of Colorado.
- 11.12 Time of Essence. Time shall be of the essence of each and every provision of the Note and the Security Documents.
- 11.13 Attorneys' Fees. If Beneficiary shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Property or the title thereto or the interest of Beneficiary under this Deed of Trust or in connection with any provision hereof or under any of the other Security Documents, or if Beneficiary employs an attorney to collect any or all of the indebtedness secured hereby or to foreclose this Deed of Trust by judicial proceedings or public trustee's sale proceedings hereunder, Beneficiary shall be reimbursed by Grantor, immediately and upon demand, for all reasonable costs, charges and reasonable attorneys' fees incurred by it in any such case, whether or not suit be commenced, and the same shall be secured hereby as a further charge and lien upon the Mortgaged Property with interest at the rate of interest provided for in the Note from the date of an Event of Default, provided however, if Beneficiary commences suit to enforce any provision of any of the Security Documents, Grantor shall have no obligation to pay for Beneficiary's court costs and attorneys fees incurred in connection therewith unless Beneficiary prevails in such suit.
- 11.14 Execution Under Seal. [Intentionally Deleted]
- 11.15 **RELIEF FROM AUTOMATIC STAY.** GRANTOR HEREBY AGREES THAT, IN CONSIDERATION OF BENEFICIARY'S AGREEMENT TO MAKE THE LOAN AND IN RECOGNITION THAT THE FOLLOWING COVENANT IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO MAKE THE LOAN, IN THE EVENT THAT GRANTOR SHALL (I) FILE WITH ANY BANKRUPTCY COURT OF COMPETENT JURISDICTION OR BE THE SUBJECT OF ANY PETITION UNDER ANY SECTION OR CHAPTER OF TITLE 11 OF THE UNITED STATES CODE, AS AMENDED ("BANKRUPTCY CODE"), OR SIMILAR LAW OR STATUTE; (II) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE BANKRUPTCY CODE OR SIMILAR LAW OR STATUTE; (III) FILE OR BE THE SUBJECT OF ANY PETITION SEEKING ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY, OR OTHER RELIEF FOR DEBTORS; (IV) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR; OR (V) BE THE SUBJECT OF AN ORDER, JUDGMENT OR DECREE ENTERED BY ANY COURT OF COMPETENT

JURISDICTION APPROVING A PETITION FILED AGAINST ANY BORROWER FOR ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY OR RELIEF FOR DEBTORS, THEN, SUBJECT TO COURT APPROVAL, BENEFICIARY SHALL THEREUPON BE ENTITLED AND GRANTOR HEREBY IRREVOCABLY CONSENTS TO, AND WILL NOT CONTEST, AND AGREES TO STIPULATE TO RELIEF FROM ANY AUTOMATIC STAY OR OTHER INJUNCTION IMPOSED BY SECTION 362 OF THE BANKRUPTCY CODE, OR SIMILAR LAW OR STATUTE (INCLUDING, WITHOUT LIMITATION, RELIEF FROM ANY EXCLUSIVE PERIOD SET FORTH IN SECTION 1121 OF THE BANKRUPTCY CODE) OR OTHERWISE, ON OR AGAINST THE EXERCISE OF THE RIGHTS AND REMEDIES OTHERWISE AVAILABLE TO BENEFICIARY AS PROVIDED IN THE SECURITY DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND GRANTOR HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO OBJECT TO SUCH RELIEF.

- 11.16 Construction of this Deed of Trust. Each term, condition and provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law but if any term, condition or provision of this Deed of Trust shall be held to be void or invalid, the same shall not effect the remainder hereof which shall be effective as though the void or invalid term, condition or provision has not been contained herein. In addition, should this instrument be or become ineffective as a deed of trust, then these presents shall be construed and enforced as a realty mortgage with the Grantor being the mortgagor and Beneficiary being the mortgagee.
- 11.17 WAIVER OF TRIAL BY JURY. GRANTOR AND BENEFICIARY EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE EXIST. GRANTOR AND BENEFICIARY ARE AUTHORIZED TO SUBMIT THIS DEED OF TRUST TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES TO ANY SECURITY DOCUMENT, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF GRANTOR'S AND BENEFICIARY'S WAIVER OF THE RIGHT TO JURY TRIAL. FURTHER, GRANTOR

**AND BENEFICIARY EACH CERTIFIES THAT NEITHER GRANTOR'S  
NOR BENEFICIARY'S REPRESENTATIVES OR AGENTS HAVE  
REPRESENTED, EXPRESSLY OR OTHERWISE, THAT  
ENFORCEMENT OF THIS WAIVER WILL NOT BE SOUGHT.**

IN WITNESS WHEREOF, the Grantor has caused this Deed of Trust to be duly executed under seal and delivered as of the day and year first above written.

**GRANTOR:**

WESTMINSTER CAMPUS, LLC, a Maryland  
limited liability company

By: Erickson Retirement Communities, LLC, a  
Maryland limited liability company,  
Member

By: 

Jeffrey A. Jacobson,  
Executive Vice President

STATE OF MARYLAND )

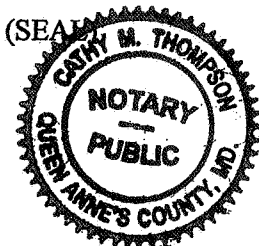
COUNTY OF BALTIMORE )

ss:

This instrument was acknowledged before me on January 4, 2007, by Jeffrey A. Jacobson, as Executive Vice President of Erickson Retirement Communities, LLC, a Maryland limited liability company, as Member of Westminster Campus, LLC, a Maryland limited liability company.

Witness my hand and official seal this 4th day of January, 2007.

My Commission Expires:



  
Notary Public

CATHY M. THOMPSON  
Notary Public  
Queen Anne's County, Maryland  
My Commission Expires December 1, 2007



**EXHIBIT "A"**  
**DESCRIPTION OF LAND**

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 1 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 27; THENCE NORTH 89°58'36" WEST ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 200.00 FEET TO A POINT ON THE WEST LINE OF INTERSTATE 25 AS DESCRIBED IN BOOK 473 AT PAGE 201; THENCE SOUTH 00°53'18" EAST ALONG SAID WEST LINE, A DISTANCE OF 830.00 FEET TO A POINT ON THE SOUTH LINE OF THAT PARCEL DESCRIBED IN BOOK 4790 AT PAGE 161 AND THE POINT OF BEGINNING; THENCE SOUTH 00°53'18" EAST CONTINUING ALONG THE WEST LINE OF SAID BOOK 473 AT PAGE 201, A DISTANCE OF 1,714.17 FEET TO A POINT ON THE NORTH LINE OF THAT PARCEL DESCRIBED IN BOOK 970 AT PAGE 76; THENCE NORTH 89°58'14" WEST ALONG SAID NORTH LINE, A DISTANCE OF 898.40 FEET TO THE NORTHWEST CORNER OF SAID PARCEL; THENCE SOUTH 00°01'46" WEST ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 15.00 FEET TO THE NORTHEAST CORNER OF A PARCEL OF LAND DESCRIBED AS PARCEL B IN BOOK 4790 AT PAGE 164; THENCE ALONG THE NORTH AND EAST LINES OF SAID PARCEL THE FOLLOWING THREE (3) COURSES:  
1) NORTH 89°58'14" WEST A DISTANCE OF 1,411.78 FEET TO A POINT OF CURVATURE;  
2) ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 89°16'42", A RADIUS OF 60.00 FEET AND AN ARC LENGTH OF 93.49 FEET (THE CHORD OF WHICH BEARS NORTH 45°19'53" WEST, 84.32 FEET);  
3) NORTH 00°41'32" WEST A DISTANCE OF 1,213.92 FEET TO A POINT ON THE SOUTH LINE OF THAT PARCEL DESCRIBED IN BOOK 4790 AT PAGE 161;  
THENCE ALONG THE SOUTH LINE OF SAID PARCEL THE FOLLOWING TWO (2) COURSES:  
1) NORTH 71°28'13" EAST A DISTANCE OF 1,379.90 FEET;  
2) NORTH 89°07'08" EAST A DISTANCE OF 1,050.00 FEET TO THE POINT OF BEGINNING.

**BASIS OF BEARINGS:**

BEARINGS ARE BASED ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 27, T. 1 S., R. 68 W. OF THE 6TH P.M., AS MONUMENTED AT THE SOUTHWEST CORNER BY A 3" ALUMINUM CAP ILLEGIBLE IN RANGE BOX AND REFERENCED AT THE SOUTH QUARTER CORNER BY TWO 3" BRASS CAPS ILLEGIBLE ON BRIDGE ABUTMENTS, AS BEARING SOUTH 89°58'14" EAST.

NOTE: THE ABOVE LEGAL DESCRIPTION WAS CREATED BY HARRIS KOCHER SMITH (GEORGE G. SMITH, JR., P.L.S. 19003)

## PAYMENT AND PERFORMANCE GUARANTY AGREEMENT

THIS PAYMENT AND PERFORMANCE GUARANTY AGREEMENT (this "Guaranty") is made as of the 11th day of January 2007, by ERICKSON RETIREMENT COMMUNITIES, LLC, a Maryland limited liability company, ("Guarantor"), for the benefit of CAPMARK BANK, a Utah industrial bank (including its successors, transferees and assigns, "Lender").

### RECITALS

A. WESTMINSTER CAMPUS, LLC, a Maryland limited liability company ("Borrower"), has borrowed the sum of \$9,724,009.00 (the "Loan") from Lender, evidenced by Borrower's Promissory Note of even date herewith (the "Note") and secured by, among other things, a Deed of Trust, Assignment of Rents and Leases and Security Agreement, of even date herewith (the "Mortgage") granting a first lien on approximately 86 acres of unimproved real property, which is located in Westminster, Adams County, Colorado (the "Property").

B. The Note, the Mortgage and the other documents, certificates, instruments and agreements executed by Borrower in connection with the Loan or to otherwise evidence or secure the Loan, and all renewals, supplements, or amendments thereto or a part thereof, are collectively referred to as the "Loan Documents".

C. As a condition of making the Loan, Guarantor has agreed to guaranty, absolutely and unconditionally, payment of the Guaranty Obligations (as defined below), subject to the terms and conditions set forth in this Guaranty.

### AGREEMENT

NOW THEREFORE, in consideration of the above and as an inducement to Lender to make the Loan evidenced by the Note, and as security for the payment of the Loan and all interest from time to time accrued and unpaid thereon, and all expenses, fees, charges and other amounts from time to time due and owing to Lender under the Note, and the other Loan Documents, and for the performance of all covenants, agreements and other obligations from time to time owing to, or for the benefit of, Lender pursuant to the Loan Documents (collectively referred to herein as the "Guaranty Obligations"), Guarantor, intending to be legally bound, hereby covenants, agrees, represents and warrants as follows:

1. Guaranty. Guarantor hereby absolutely and unconditionally guarantees to the Lender the full, regular and punctual payment and performance of the Guaranty Obligations within fifteen (15) days of the Lender's demand therefor. Without limiting the generality of the foregoing, "Guaranty Obligations" is used herein in its most comprehensive sense to include all debts, obligations and indebtedness described in the Loan Documents, whether now or hereafter made, incurred, or created, voluntary or involuntary, due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and regardless of whether there is any recourse with respect to any portion of such Guaranty Obligations as against Borrower or any partner of Borrower. In addition, Guarantor guarantees the full payment of, and agrees to reimburse Lender for, all commercially reasonable costs of collection incurred by Lender in

enforcing the Guaranty Obligations and pursuing any remedies set forth in the Loan Documents and/or the Guaranty, including, without limitation, court costs and actual attorneys' fees (including, but not limited to, fees in any bankruptcy or appellate proceeding).

2. Payments. All payments to be made by Guarantor to Lender hereunder shall be made in lawful money of the United States of America, in immediately available funds, at 116 Welsh Road, Horsham, Pennsylvania 19044, or such other location designated by Lender in writing, and shall be accompanied by a notice from Guarantor stating that such payments are made under this Guaranty. All payments available to Lender for application in payment or reduction of the Guaranty Obligations may be applied by Lender in such manner and in such amount, and at such time or times and in such order and priority as Lender may see fit and to the payment or reduction of such portion of the Guaranty Obligations as Lender may elect.

3. Subsequent Acts by Lender. Lender may, in its sole discretion and without notice to Guarantor, take any action which might otherwise be deemed a legal or equitable release or discharge of Guarantor's obligations hereunder without either impairing or affecting the liability of Guarantor for payment of the Guaranty Obligations, which actions might include, by way of illustration and not limitation:

(a) at any time or from time to time, the time for Borrower's performance of or compliance with any provision of the Loan Documents may be extended or such performance or compliance may be waived by Lender;

(b) the acceptance of partial payment of the Guaranty Obligations;

(c) any of the acts permitted in the Loan Documents may be performed;

(d) the Loan Documents may from time to time be amended and/or renewed by Borrower and Lender for the purpose of adding any provisions thereto or changing in any manner the rights of Lender or of Borrower thereunder, provided the amount of Guaranty Obligations shall not be increased as a consequence of such amendment and/or renewal;

(e) the maturity date of the Note may be changed or renewed in whole or in part;

(f) the maturity of the Note may be accelerated in accordance with the terms of the Loan Documents;

(g) any collateral security for all or any part of the Guaranty Obligations may be exchanged, released, compromised, consolidated, surrendered or otherwise dealt with, and Lender's interest therein may be released and may or may not be perfected;

(h) the settlement, release, compounding, compromise, cancellation, rearrangement or consolidation of any of the Guaranty Obligations;

(i) the collection of or other liquidation of any claims Lender may have in respect to the Guaranty Obligations;

(j) the granting of indulgences, forbearance, compromises, extensions or adjustments in respect to any covenant or agreement under the Loan Documents; and/or

(k) the release from liability of any Guarantor and/or any additional parties who may guarantee payment of the Guaranty Obligations or any portion thereof.

4. Certain Rights, Subordination, Etc.

(a) Lender may pursue its rights and remedies under this Guaranty and shall be entitled to payment hereunder notwithstanding any other guaranty of all or any part of the Guaranty Obligations, and notwithstanding any action taken by Lender to enforce any of its rights or remedies under such other guaranty, or any payment received thereunder (but in no event shall Lender collect more than the aggregate amount of the Guaranty Obligations).

(b) Any obligation or debt of Borrower now or hereafter held by Guarantor is hereby subordinated to the Guaranty Obligations and Guarantor shall not enforce any such indebtedness from Borrower while the Guaranty Obligations remain outstanding. Nevertheless, upon request by Lender, Guarantor shall enforce and receive such indebtedness of Borrower to Guarantor. Notwithstanding anything herein to the contrary, Guarantor may collect such indebtedness of Borrower to Guarantor pursuant to the terms of such indebtedness as long as Guarantor has not received written notice of a Borrower's default under any of the Loan Documents which default has not subsequently been cured on terms permitted in the Loan Documents. Any sums collected at Lender's request or collected in contravention of the prohibition set forth herein shall be held by Guarantor as trustee for Lender and shall be paid over to Lender on account of the Guaranty Obligations; provided, however, that such payments shall not impair, reduce or affect in any manner the liability of Guarantor under the other provisions of this Guaranty.

(c) Guarantor agrees that if any event of default exists under the Note, the Mortgage or the other Loan Documents ("Event of Default") and is continuing, (i) such Guarantor shall not accept payment from any other guarantor, if any, of any Guaranty Obligations by way of contribution or similar rights on account of any payment made hereunder by Guarantor to Lender, all of which rights are hereby subordinated to Guarantor's obligations hereunder to Lender, (ii) Guarantor will not take any action to exercise or enforce any rights to such contribution, and (iii) if Guarantor should receive payment, satisfaction or security for any indebtedness of Borrower to Lender, the same shall be delivered to Lender in the form received, endorsed or signed as may be appropriate for application on account of or as security for the indebtedness of Borrower to Lender and, until so delivered, shall be held in trust for Lender as security for the indebtedness of Borrower to Lender.

(d) If any Event of Default exists with respect to the Guaranty Obligations, Guarantor agrees to pay or perform on demand (either oral or written) the Guaranty Obligations. Lender shall not be under a duty to protect, secure or insure or be required to liquidate any security or lien provided by the Mortgage or other such collateral held by Lender prior to making such demand.

(e) Notwithstanding any payment or payments made by Guarantor under this Guaranty, Guarantor expressly, irrevocably and unconditionally waives and releases any and all "claims" (as that term is defined in the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. Sections 101 *et seq.*, and the regulations adopted and promulgated pursuant thereto (collectively, the "Bankruptcy Code")) it may now or hereafter have against Borrower, and shall not be entitled to, and hereby expressly waives, any and all rights of subrogation, reimbursement, indemnity, exoneration and contribution against Borrower, which Guarantor may now or hereafter have against Borrower without regard to whether any such right or claim arises expressly; provided, that such waiver and release shall not be effective as to any such claim or entitlement or such subrogation and other rights that accrue after the indefeasible payment, performance or other satisfaction in full of the Guaranty Obligations.

5. Representations and Warranties. Guarantor represents and warrants to Lender that:

(a) Financial Condition. The financial statements of the Guarantor heretofore furnished to Lender are complete and correct and fairly present the financial condition of the Guarantor as of the date thereof. Since the date of said financial statements there has been no material adverse change in the financial condition or operations, or the business taken as a whole, of Guarantor from that set forth therein.

(b) Litigation. Except as disclosed on Exhibit A, attached hereto and made a part hereof, there are no legal or arbitral proceedings or any proceedings by or before any governmental or regulatory authority or agency now pending or, to the best of Guarantor's knowledge, threatened against Guarantor, in which an adverse decision could materially and adversely affect the financial condition of Guarantor.

(c) No Breach. The execution and delivery of this Guaranty, the consummation of the transactions herein contemplated and compliance with the terms and provisions hereof will not (i) conflict with or result in a breach of, or require any consent (not heretofore obtained at the time this representation is made) under, any applicable law, administrative proceeding or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Guarantor is a party or by which Guarantor is bound or to which Guarantor is subject, (ii) constitute a default under any such agreement or instrument or under any other agreement or instrument binding upon Guarantor, or (iii) result in the creation or imposition of any lien upon any of the revenues or assets of Guarantor pursuant to the terms of any such agreement or instrument.

(d) Approvals. To the best of Guarantor's knowledge, no authorizations, approvals, or consents of (other than those heretofore obtained and in full force and effect), and no filings or registrations with (other than those heretofore obtained and in full force and effect), any governmental or regulatory authority or agency are necessary for the execution, delivery or performance by Guarantor of this Guaranty or for the validity or enforceability thereof.

(e) Taxes, etc. Guarantor has filed all United States federal and state tax returns and all other tax returns that are required to be filed by Guarantor and has paid all taxes due pursuant to such returns or pursuant to any assessment received by Guarantor, except such

taxes, the payment of which is not yet due, or which if due, is not yet delinquent or is being contested in good faith or which has not been finally determined.

(f) Benefit. The making of the Loan by Lender to Borrower will directly benefit Guarantor.

6. Financial Statements and Other Information. Guarantor shall provide Lender the following financial statements and information on a continuing basis during the term of the Loan:

(a) within one hundred twenty (120) days after the end of each fiscal year of Guarantor, audited (by a nationally recognized accounting firm or independent certified public accountant acceptable to Lender) financial statements of Guarantor, prepared internally, which statements shall be prepared in accordance with GAAP, and shall include a balance sheet and a statement of income and expenses for the year then ended, certified by the chief financial officer of Guarantor to be true and correct in all material respects; and

(b) within forty-five (45) days after the end of each fiscal quarter of Guarantor, unaudited interim financial statements of Guarantor, prepared internally, which statements shall be prepared in accordance with GAAP, and shall include a balance sheet and a statement of income and expenses, certified by the chief financial officer of Guarantor to be true and correct in all material respects.

(c) upon Lender's consent, Guarantor and its affiliates shall also promptly deliver to Lender such information as Lender may, from time to time, reasonably request to evaluate the financial condition and business affairs of any such entity.

The Lender reserves the right to require such other financial information of Guarantor in such form and upon an Event of Default, at such other times (including monthly or more frequently) as Lender shall deem necessary, and Guarantor agrees promptly to provide or to cause to be provided, such information to Lender. All financial statements must be in form and detail as Lender may from time to time request in its commercially reasonable discretion.

7. Financial Covenants. During the term of the Loan, Guarantor shall maintain, at all times, Liquid Assets in an amount not less than Twenty-Four Million and 00/100 Dollars (\$24,000,000.00) or such greater amount as the Guarantor is obligated to maintain under any agreements with other construction lenders. In addition, if Guarantor is involved in any continuing care retirement community or similar project (an "Other Project") which is being financed in whole or in part by bank construction financing or its equivalent (excluding Financing by a project tenant which is or has applied for status as a non-profit entity), the Guarantor will maintain Liquid Assets equal in value to at least an additional Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000.00) for each Other Project in excess of the first four (4) such Other Projects (which are covered by the \$24,000,000 requirement above), provided that sites that are acquired after the date hereof shall not be deemed to be Other Projects until construction is commenced therein. For purposes of this Guaranty, Liquid Assets shall mean unencumbered cash and unencumbered readily marketable securities (including both equity and debt instruments) satisfactory to Lender in its reasonable discretion.

8. Mergers, Ownership and Management. Guarantor agrees not to become a party to any merger or consolidation with any other entity except for mergers between or with Related Entities (as defined in the Credit Agreement described in Section 8.16 of the Mortgage) and in which one of the Related Entities is the survivor provided Lender has been given prior written notice and such merger or consolidation does not limit or impair any obligations of Guarantor and/or Borrower under the Loan Documents or any of Lender's rights or remedies under the Loan Documents or under applicable law. Guarantor shall not, and shall cause Borrower not to, cause or permit any change in the name of, or the ownership of member interests in, the Borrower or Guarantor, or any change in the management of the Borrower (but Guarantor shall give Lender notice of any changes in the management of the Guarantor), or in the manner in which the business or operations of the Borrower or the Guarantor is conducted.

9. Guaranty is a Continuing Obligation. The obligations of the Guarantor under this Guaranty shall be continuing, absolute, irrevocable and unconditional under all circumstances, and shall remain in full force and effect or be reinstated, until all of the Guaranty Obligations shall have been paid and performed in full, irrespective of the bankruptcy, insolvency, merger, reorganization, termination, discontinuation or dissolution of the Borrower or any assignment for the benefit of creditors by the Borrower. The Guarantor acknowledges and agrees that Guarantor's obligations hereunder shall apply to and continue with respect to any of the obligations of the Borrower under the Loan Documents which are subsequently recovered from the Lender for the reasons set forth below. In the event that any payment by or on the behalf of the Borrower to Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason the Lender is required to refund such payment or pay the amount thereof to any other party, including, without limitation, as a result of the appointment of a receiver, intervenor, or conservator of, or trustee or similar officer for, the Borrower or of any substantial part of its property or otherwise, such payment by the Borrower or any other party to the Lender shall not constitute a release of the Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by the Lender of this Guaranty or of the Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by the Lender or paid by the Lender to another party (which amounts shall constitute part of the Guaranty Obligations), and any interest paid by the Lender and any attorneys' fees, costs and expenses paid or incurred by the Lender in connection with any such event. It is the intent of the Guarantor and the Lender that the obligations and liabilities of the Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranty Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of the Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor.

10. Waiver and Release of Subrogation and Participation. Until such time as the Guaranty Obligations have been satisfied in full, Guarantor shall have no right of subrogation in or under the Guaranty Obligations, and no rights of reimbursement, indemnity or contribution from the Borrower or any other rights by law, equity, statute or contract that would give rise to a creditor-debtor relationship between Guarantor and the Borrower. Guarantor shall have no right to participate in any way in any of the collateral which is conveyed under the Loan Documents as security for the Guaranty Obligations. Until such time as the Guaranty Obligations have been



satisfied in full, Guarantor hereby explicitly waives and releases any of the above-described rights of subrogation, reimbursement, indemnity, contribution, participation, and any right to require the marshaling of Borrower's assets under any circumstances.

11. Continuing Validity. Guarantor further agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected or impaired (a) by reason of the assertion by Lender of any rights or remedies which it may have under or with respect to either the Note, the Mortgage, or the other Loan Documents, against any person obligated thereunder or against the owner of the premises covered by the Mortgage, (b) by reason of any failure to file or record any of such instruments or to take or perfect any security intended to be provided thereby, (c) by reason of the commencement of a case under the Bankruptcy Code by or against any person obligated under the Note, the Mortgage or the other Loan Documents, or the death of any Guarantor, or (d) by reason of any payment made on the Guaranty Obligations or any other indebtedness arising under the Note, the Mortgage or the other Loan Documents, whether made by Borrower or Guarantor or any other person, which is required to be refunded pursuant to any bankruptcy or insolvency law; it being understood that no payment so refunded shall be considered as a payment of any portion of the Guaranty Obligations, nor shall it have the effect of reducing the liability of Guarantor hereunder. It is further understood, that if Borrower shall have taken advantage of, or be subject to the protection of, any provision in the Bankruptcy Code, the effect of which is to prevent or delay Lender from taking any remedial action against Borrower, including the exercise of any option Lender has to declare the Guaranty Obligations due and payable on the happening of any default or event by which under the terms of the Note, the Mortgage or the other Loan Documents, the Guaranty Obligations shall become due and payable, Lender may, as against Guarantor, nevertheless, declare the Guaranty Obligations due and payable and enforce any or all of its rights and remedies against Guarantor provided for herein.

12. Notice. All notices given under this Guaranty shall be in writing and shall be either hand delivered or mailed, by certified U.S. mail, return receipt requested, first class postage prepaid, to the other party, at its address set forth below or at such other address as such party may designate by notice to the other party:

(a) If to Guarantor:

Erickson Retirement Communities, LLC  
701 Maiden Choice Lane  
Baltimore, Maryland 21228  
Attention: General Counsel

If to Lender:

Capmark Bank  
116 Welsh Road  
Horsham, Pennsylvania 19044  
Attention: Servicing Department

with a copy to:

Ballard Spahr Andrews & Ingersoll, LLP  
300 East Lombard Street, 18<sup>th</sup> Floor  
Baltimore, Maryland 21202-3268  
Attention: Christopher J. Fritz, Esq.

13. No Waiver by Lender; Remedies. No failure on the part of Lender or the holder of the Note to exercise, and no delay in exercising, any right hereunder or thereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right. Guarantor hereby agrees that all rights and remedies that Lender is afforded by reason of this Guaranty are separate and cumulative and may be pursued separately, successively, or concurrently, as Lender deems advisable. In addition, all such rights and remedies are non-exclusive and shall in no way limit or prejudice Lender's ability to pursue any other legal or equitable rights or remedies that may be available. Failure of Lender to insist upon strict performance or observance of any of the terms, provisions and covenants hereof or to exercise any right herein contained shall not be construed as a waiver or relinquishment of the right to demand strict performance at another time. Receipt by Lender of any payment or performance on the Guaranty Obligations shall not be deemed a waiver of the breach of any provision hereof or of any of the Loan Documents. Without limiting the generality of the foregoing, Guarantor agrees that in any action by Lender by reason of the Guaranty Obligations, Lender, at its election, may proceed (a) against Guarantor together with Borrower, (b) against Guarantor and Borrower, individually, or (c) against Guarantor only without having commenced any action against, or having obtained any judgment against, Borrower.

14. Certain Waivers by Guarantor. AS A FURTHER INDUCEMENT TO LENDER TO MAKE THE LOAN AND IN CONSIDERATION THEREOF, GUARANTOR FURTHER COVENANTS AND AGREES THAT SERVICE OF ANY SUMMONS AND COMPLAINT OR OTHER PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO GUARANTOR AT GUARANTOR'S ADDRESS HEREINABOVE SET FORTH, GUARANTOR HEREBY WAIVING PERSONAL SERVICE THEREOF. GUARANTOR HEREBY WAIVES THE PLEADING OF ANY STATUTE OF LIMITATIONS AS A DEFENSE TO THE OBLIGATIONS HEREUNDER. GUARANTOR HEREBY WAIVES NOTICE OF THE ACCEPTANCE HEREOF, PRESENTMENT, DEMAND FOR PAYMENT, PROTEST, NOTICE OF PROTEST, OR ANY AND ALL NOTICE OF NON-PAYMENT, NON-PERFORMANCE OR NON-OBSERVANCE, OR OTHER PROOF, OR NOTICE OR DEMAND.

THE GUARANTOR FURTHER WAIVES AND AGREES NOT TO ASSERT: (A) ANY RIGHT TO REQUIRE LENDER TO PROCEED AGAINST BORROWER OR TO PROCEED AGAINST ANY OTHER GUARANTOR, OR TO PROCEED AGAINST OR EXHAUST ANY SECURITY FOR THE GUARANTY OBLIGATIONS, OR TO PURSUE ANY OTHER REMEDY AVAILABLE TO LENDER, OR TO PURSUE ANY REMEDY IN ANY PARTICULAR ORDER OR MANNER, (B) THE BENEFIT OF ANY STATUTE OF LIMITATIONS AFFECTING GUARANTOR'S LIABILITY HEREUNDER OR THE

ENFORCEMENT HEREOF, (C) NOTICE OF THE EXISTENCE, CREATION OR INCURRING OF NEW OR ADDITIONAL INDEBTEDNESS OF BORROWER TO LENDER, (D) THE BENEFITS OF ANY STATUTORY PROVISION LIMITING THE LIABILITY OF A SURETY, (E) ANY DEFENSE ARISING BY REASON OF ANY DISABILITY OR OTHER DEFENSE OF BORROWER OR BY REASON OF THE CESSATION FROM ANY CAUSE WHATSOEVER (OTHER THAN PAYMENT IN FULL) OF THE LIABILITY OF BORROWER FOR THE GUARANTY OBLIGATIONS, (F) THE BENEFITS OF ANY STATUTORY PROVISION LIMITING THE RIGHT OF LENDER TO RECOVER A DEFICIENCY JUDGMENT, OR TO OTHERWISE PROCEED AGAINST ANY PERSON OR ENTITY OBLIGATED FOR PAYMENT OF THE GUARANTY OBLIGATIONS, AFTER ANY FORECLOSURE OR TRUSTEE'S SALE OF ANY SECURITY FOR THE GUARANTY OBLIGATIONS, AND (G) ANY OTHER DEFENSE OR CIRCUMSTANCE WHICH MIGHT OTHERWISE CONSTITUTE A LEGAL OR EQUITABLE DISCHARGE OF GUARANTOR'S LIABILITY HEREUNDER, ARISING FROM OR OUT OF THE LOAN AND/OR THE LOAN DOCUMENTS.

15. Waiver of Automatic Stay. GUARANTOR HEREBY AGREES THAT, IN CONSIDERATION OF LENDER'S AGREEMENT TO MAKE THE LOAN AND IN RECOGNITION THAT THE FOLLOWING COVENANT IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, IN THE EVENT THAT GUARANTOR SHALL (A) FILE WITH ANY BANKRUPTCY COURT OF COMPETENT JURISDICTION OR BE THE SUBJECT OF ANY PETITION UNDER ANY SECTION OR CHAPTER OF TITLE 11 OF THE UNITED STATES CODE, AS AMENDED ("BANKRUPTCY CODE"), OR SIMILAR LAW OR STATUTE, (B) BE THE SUBJECT OF ANY ORDER FOR RELIEF ISSUED UNDER THE BANKRUPTCY CODE OR SIMILAR LAW OR STATUTE, (C) FILE OR BE THE SUBJECT OF ANY PETITION SEEKING ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY, OR OTHER RELIEF FOR DEBTORS, (D) HAVE SOUGHT OR CONSENTED TO OR ACQUIESCED IN THE APPOINTMENT OF ANY TRUSTEE, RECEIVER, CONSERVATOR, OR LIQUIDATOR, OR (E) BE THE SUBJECT OF AN ORDER, JUDGMENT OR DECREE ENTERED BY ANY COURT OF COMPETENT JURISDICTION APPROVING A PETITION FILED AGAINST GUARANTOR FOR ANY REORGANIZATION, ARRANGEMENT, COMPOSITION, READJUSTMENT, LIQUIDATION, DISSOLUTION, OR SIMILAR RELIEF UNDER ANY PRESENT OR FUTURE FEDERAL OR STATE ACT OR LAW RELATING TO BANKRUPTCY, INSOLVENCY OR RELIEF FOR DEBTORS, THEN, SUBJECT TO COURT APPROVAL, LENDER SHALL THEREUPON BE ENTITLED AND GUARANTOR HEREBY IRREVOCABLY CONSENTS TO, AND WILL NOT CONTEST, AND AGREES TO STIPULATE TO RELIEF FROM ANY AUTOMATIC STAY OR OTHER INJUNCTION IMPOSED BY SECTION 362 OF THE BANKRUPTCY CODE, OR SIMILAR LAW OR STATUTE (INCLUDING, WITHOUT LIMITATION, RELIEF FROM ANY EXCLUSIVE PERIOD SET FORTH IN SECTION 1121 OF THE BANKRUPTCY CODE) OR OTHERWISE, ON OR AGAINST THE EXERCISE OF THE RIGHTS AND REMEDIES OTHERWISE AVAILABLE TO LENDER AS PROVIDED IN THIS GUARANTY AND/OR THE LOAN DOCUMENTS, AND AS OTHERWISE PROVIDED BY LAW, AND

GUARANTOR HEREBY IRREVOCABLY WAIVES GUARANTOR'S RIGHTS TO OBJECT TO SUCH RELIEF.

16. Guaranty of Payment. This is a guaranty of payment and not of collection and upon any default of Borrower under the Note, the Mortgage or the other Loan Documents, Lender may, at its option, proceed directly and at once, without notice, against Guarantor to collect and recover the full amount of the liability hereunder or any portion thereof, without proceeding against Borrower or any other person, or foreclosing upon, selling, or otherwise disposing of or collecting or applying against any of the Property or other collateral for the Loan.

(a) Joint and Several Liability. [Intentionally Deleted]

(b) Assignment. Lender may assign this Guaranty or any rights or powers hereunder, in whole or in part, in connection with the sale of the Note and assignment of the Mortgage. The duties and obligations of Guarantor may not be delegated or transferred by Guarantor without the prior written consent of Lender which may be withheld in its absolute discretion. Each reference herein to Lender shall be deemed to include its successors and assigns, to whose favor the provisions of this Guaranty shall also inure. Each reference herein to Guarantor shall be deemed to include the heirs, executors, administrators, legal representatives, successors and assigns of Guarantor, all of whom shall be bound by the provisions of this Guaranty. If any party hereto shall be a partnership or a limited liability company, the agreements and obligations on the part of Guarantor herein contained shall remain in force and application notwithstanding any changes in the individuals or entities composing the partnership or the limited liability company, and the term "Guarantor" shall include any altered or successive partnerships and any altered or successive limited liability companies but the predecessor partnerships and their partners, and the predecessor limited liability companies and their members, shall not thereby be released from any obligations or liability hereunder.

17. Waiver of Trial by Jury; Service of Process. GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE GUARANTOR AND THE LENDER MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO, THIS AGREEMENT AND/OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE GUARANTOR, AND THE GUARANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THE GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT GUARANTOR HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED BY GUARANTOR OF GUARANTOR'S OWN FREE WILL, AND THAT GUARANTOR HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. GUARANTOR AGREES TO PAY ALL COURT COSTS AND REASONABLE

ATTORNEY'S FEES INCURRED BY LENDER IN CONNECTION WITH ENFORCING ANY PROVISION OF THIS GUARANTY.

18. Power and Authority. Guarantor (and its representative, executing below, if any) has full power, authority and legal right to execute this Guaranty and to perform all its obligations under this Guaranty.

19. Complete Agreement; Modification; Waiver. All understandings, representations and agreements heretofore had with respect to this Guaranty are merged into this Guaranty which are incorporated herein which alone fully and completely expresses the agreement of Guarantor and Lender. In no event shall any modification or waiver of the provisions of this Guaranty be effective unless in writing executed by Lender. Any waiver granted by Lender shall be applicable only in the specific instance for which it is given.

20. Governing Law. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED AND APPLICABLE FEDERAL LAW.

21. Counterparts; Construction. This Guaranty may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument. Words of any gender used in this Guaranty shall be held and construed to include the other gender, and words in the singular shall be held and construed to include the plural, and words in the plural shall be held and construed to include the singular, unless this Guaranty or the context otherwise requires.

22. Review by Guarantor. GUARANTOR HAS RECEIVED COPIES OF, AND HAS HAD THE OPPORTUNITY TO REVIEW, ALL OF THE LOAN DOCUMENTS REFERRED TO IN THIS GUARANTY. GUARANTOR HAS DISCUSSED THIS GUARANTY WITH GUARANTOR'S LEGAL COUNSEL, AND GUARANTOR UNDERSTANDS THE NATURE AND EXTENT AND THE LEGAL AND PRACTICAL CONSEQUENCES OF GUARANTOR'S LIABILITY UNDER THIS GUARANTY.

23. No Oral Agreement. To the extent allowed by law, Guarantor agrees to be bound by the terms of the following notice:

NOTICE: THIS GUARANTY AND THE OTHER LOAN DOCUMENTS CONSTITUTE A WRITTEN AGREEMENT WHICH REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES RELATING TO THE LOAN.

[SIGNATURES BEGIN ON NEXT PAGE]

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

**GUARANTOR:**

ERICKSON RETIREMENT COMMUNITIES,  
LLC, a Maryland limited liability company

By: \_\_\_\_\_

Jeffrey A. Jacobson,  
Executive Vice President

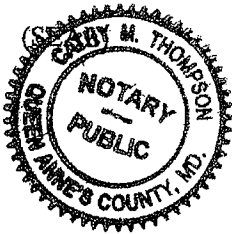
STATE OF MARYLAND    )  
                                  )  
COUNTY OF BALTIMORE)

ss:

This instrument was acknowledged before me on January 4, 2007, by Jeffrey A. Jacobson, as Executive Vice President of Erickson Retirement Communities, LLC, a Maryland limited liability company.

Witness my hand and official seal this 4<sup>th</sup> day of January, 2007.

My Commission Expires:



\_\_\_\_\_  
Cathy M. Thompson  
Notary Public

CATHY M. THOMPSON  
Notary Public  
Queen Anne's County, Maryland  
My Commission Expires December 1, 2007

**EXHIBIT A**  
**PAYMENT AND PERFORMANCE GUARANTY AGREEMENT**

**BY**  
**ERICKSON RETIREMENT COMMUNITIES, LLC**  
**for benefit of**  
**CAPMARK BANK**

**LITIGATION**

Robert Lee Butt, et. al., v. Erickson Retirement Communities, LLC, et. al., Case No.: 03-C-05-009447 OT, is currently pending in the Circuit Court of Baltimore County, Maryland. An Answer has been filed on behalf of all ERC defendants.

The case arises out of alleged carbon monoxide poisoning of the Plaintiff while he was performing services for an outside consultant at Oak Crest Village. The Plaintiff alleges permanent brain damage and loss of concentration and memory. Damages have been requested in the amount of \$20,000,000.

The claim is covered by insurance carried by Erickson (subject to a \$50,000 deductible). Plaintiff's attorney is not pushing case forward and is allowing Defendants time to investigate construction or manufacture concerns. Additional parties such as architect, HVAC contractor may be brought into case. The mediation is scheduled to be held by March 31, 2007.