

**Supplemental Security
Instrument/ Mortgage/Deed
of Trust
Section 241(a)**

**U.S. Department of Housing
and Urban Development**
Office of Residential
Care Facilities

OMB Approval No. 2502-0605
(exp. mm/dd/yyyy)

1

2

3

4

5

6

7

8

9

10

11

Public reporting burden for this collection of information is estimated to average 0.5 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

12

13

14

15

16

Recording requested by:

17

18

19

20

21

After recording return to:

22

23

24

25

26

27

28

SUPPLEMENTAL HEALTHCARE [MORTGAGE,
DEED OF TRUST, DEED TO SECURE DEBT, SECURITY DEED
OR OTHER DESIGNATION AS APPROPRIATE IN JURISDICTION] fill in appropriate
designation
ASSIGNMENT OF LEASES, RENTS AND REVENUE
AND SECURITY AGREEMENT
(STATE)

29

30

31

FHA Project Number:

Project Name:

TABLE OF CONTENTS

SECTION	PAGE
1. Definitions.....	5
2. Uniform Commercial Code Security Agreement	14
3. Control of Deposit Accounts	15
4. Assignment of Leases; Leases Affecting the Mortgaged Property.....	15
5. Payment of Indebtedness; Performance Under the Loan Documents; Prepayment Premium.....	17
6. Exculpation	17
7. Deposits for Taxes, Insurance and Other Charges.....	17
8. Imposition Deposits	19
9. Regulatory Agreement	20
10. Application of Payments.....	20
11. Compliance with Laws	21
12. Use of Property	21
13. Protection of Lender’s Security	21
14. Inspection.....	22
15. Books and Records; Financial Reporting	22
16. Taxes; Operating Expenses.....	22
17. Liens; Encumbrances	23
18. Preservation, Management and Maintenance of the Mortgaged Property.....	23
19. Property and Liability Insurance.....	24
20. Condemnation.....	26
21. Transfers of the Mortgaged Property or Interests in Borrower.....	27
22. Events of Default	27
23. Remedies Cumulative	29
24. Forbearance.....	29
25. Loan Charges	30
26. Waiver of Statute of Limitations.....	30
27. Waiver of Marshalling.....	30
28. Further Assurances.....	30
29. Estoppel Certificate.....	30
30. Governing Law; Consent to Jurisdiction And Venue	31
31. Notice.....	31
32. Sale of Note; Change in Servicer.....	32
33. Single Asset Borrower	32
34. Successors and Assigns Bound.....	32
35. Joint and Several Liability	32
36. Relationship of Parties; No Third Party Beneficiary	33
37. Severability; Amendments.....	33
38. Rules of Construction	33
39. Loan Servicing	33
40. Disclosure of Information.....	33
41. No Change in Facts or Circumstances	34

78	42.	Estoppel.....	34
79	43.	Acceleration; Remedies	34
80	44.	Federal Remedies.....	34
81	45.	Remedies for Waste	34
82	46.	Termination of HUD Rights and References.....	35
83	47	[Construction Financing]	35
84	48.	Environmental Hazards.....	36
85	49.	Counterpart Signatures.....	42
86	50.	[State Law Requirements].....	43
87	51.	Attached Exhibits.....	43
88		<u>EXHIBIT A</u> – LEGAL DESCRIPTION OF THE LAND.....	44
89		<u>EXHIBIT B</u> – MODIFICATIONS TO SECURITY INSTRUMENT.....	45
90			
91			

DRAFT

92 SUPPLEMENTAL HEALTHCARE [MORTGAGE,
93 DEED OF TRUST, DEED TO SECURE DEBT, SECURITY DEED,
94 OR OTHER DESIGNATION AS APPROPRIATE IN JURISDICTION]
95 *fill in appropriate designation*
96 ASSIGNMENT OF LEASES, RENTS AND REVENUE AND
97 SECURITY AGREEMENT

98 THIS SUPPLEMENTAL HEALTHCARE [MORTGAGE, DEED OF TRUST, DEED
99 TO SECURE DEBT, SECURITY DEED, OR OTHER DESIGNATION AS APPROPRIATE IN
100 JURISDICTION] *fill in appropriate designation*, ASSIGNMENT OF LEASES, RENTS AND
101 REVENUE AND SECURITY AGREEMENT, WHICH, FOR AS LONG AS THE LOAN IS
102 INSURED OR HELD BY HUD, SHALL BE DEEMED TO BE THE MORTGAGE AS
103 DEFINED BY PROGRAM OBLIGATIONS (this “**Security Instrument**”), is made as of this
104 ____ day of _____, 20__, [among][between] _____, a _____ organized and
105 existing under the laws of _____, whose address is _____, as grantor, trustor and
106 borrower (“**Borrower**”), to _____, [as trustee (“**Trustee**”), a _____ organized and
107 existing under the laws of _____, OR an individual whose address is _____, for the
108 benefit of _____, as beneficiary, and _____,] [DELETE PRIOR LANGUAGE
109 CONCERNING A TRUSTEE IF NOT APPLICABLE] as Lender (in such capacity, “**Lender**”), a
110 _____ organized and existing under the laws of _____, whose address is
111 _____.

112 **[ALTERNATIVE A: DEED OF TRUST GRANTING CLAUSE; DELETE IF NOT**
113 **APPLICABLE.]**

114 Borrower, in consideration of the Indebtedness and the trust created by this Security
115 Instrument, irrevocably grants, conveys and assigns to Trustee and Trustee’s successors and
116 assigns, in trust, with power of sale, the Mortgaged Property, including the Land located in
117 _____ County, State of _____ and described in Exhibit A, attached to and
118 incorporated in this Security Instrument, to have and to hold the Mortgaged Property unto
119 Trustee and Trustee’s successors and assigns.]

120 **[ALTERNATIVE B: MORTGAGE GRANTING CLAUSE; DELETE IF NOT**
121 **APPLICABLE.]**

122 Borrower, in consideration of the Indebtedness and the security interest created by this
123 Security Instrument, irrevocably mortgages, grants, conveys and assigns to Lender and Lender’s
124 successors and assigns, with power of sale, the Mortgaged Property, including the Land located
125 in _____ County, State of _____ and described in Exhibit A, attached to and
126 incorporated in this Security Instrument, to have and to hold the Mortgaged Property unto
127 Lender and Lender’s successors and assigns.]

128 **[ALTERNATIVE C: DEED TO SECURE DEBT, – GEORGIA ONLY - GRANTING**
129 **CLAUSE; DELETE IF NOT APPLICABLE.]**

130 Borrower, in consideration of the Indebtedness and the security interest created by this
131 Security Instrument, irrevocably grants, conveys and assigns to Lender and Lender’s successors

132 and assigns, with power of sale, the Mortgaged Property, including the Land located in
133 _____ County, State of Georgia and described in Exhibit A, attached to and incorporated
134 in this Security Instrument, to have and to hold the Mortgaged Property unto Lender and
135 Lender’s successors and assigns. As used in this Security Instrument, the term “Mortgaged
136 Property” is synonymous with the term “Secured Property,” and the term “lien” is synonymous
137 with the term “security interest and title.”]

138 TO SECURE TO LENDER the repayment of the Indebtedness evidenced by the Note
139 from Borrower payable to Lender dated as of the date of this Security Instrument, and maturing
140 on _____, 20__, in the principal amount of _____ (\$_____) (the “**Loan**”), and
141 all renewals, extensions and modifications of the Indebtedness, and the performance of the
142 covenants and agreements of Borrower contained in this Security Instrument and the Note.

143 Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged
144 Property and has the right, power and authority to mortgage, grant, convey and assign the
145 Mortgaged Property, and that the Mortgaged Property is unencumbered except for the “First
146 Mortgage Documents” (hereinafter defined) and easements and restrictions listed in a schedule
147 of exceptions to coverage in any title insurance policy issued to Lender contemporaneously with
148 the execution and recordation of this Security Instrument and insuring Lender’s interest in the
149 Mortgaged Property. Borrower covenants that Borrower shall warrant and defend generally such
150 title to the Mortgaged Property against all claims and demands, subject to the First Mortgage
151 Documents and said easements and restrictions.

152 This Security Instrument is junior in priority to each of the following documents
153 (collectively, the “First Mortgage Documents”): (i) _____ [Insert
154 **Title of First Security Instrument**] from the Borrower in favor of _____
155 (in such capacity, together with its successors and assigns, the “First Lender”) dated _____
156 _____ (the “First Security Instrument”) and recorded in the real estate records of _____
157 County, _____ on _____ in _____ [Insert Recording Number];
158 (ii) _____ [Insert Title of Borrower Regulatory Agreement]
159 between the Borrower and HUD dated _____ (the “First Borrower Regulatory
160 Agreement”); [and] (iii) [list Operator and Master Tenant Regulatory Agreements related
161 to First Security Instrument, if applicable] [and (iv) list separate security agreements and
162 assignment of leases and rents, as applicable]. The First Security Instrument secures a certain
163 _____ [Insert Title of First Note], dated _____ from Borrower to
164 First Lender, in the original principal amount of \$_____ (the “First Note”) given in
165 connection with a first mortgage loan (the “First Loan”) made by First Lender to Borrower.

166 **Covenants.** Borrower and Lender covenant and agree as follows:

167 **1. DEFINITIONS.** The definition of any capitalized term or word used herein can
168 be found in this Security Instrument, and if not found in this Security Instrument, then found in
169 the Borrower’s Regulatory Agreement and/or in the Note. The following terms, when used in
170 this Security Instrument (including when used in the above recitals), shall have the following
171 meanings:

172 “**Accounts Receivable**” means all right, title and interest of Operator in and to the following, in
173 each case arising from the operation of the Healthcare Facility located on the Mortgaged
174 Property in the ordinary course of business: (a) all rights to payment of a monetary obligation,
175 whether or not earned by performance, including, but not limited to, accounts receivable, health-
176 care insurance receivables, Medicaid and Medicare receivables, Veterans Administration
177 receivables, or other governmental receivables, private patient receivables, and HMO
178 receivables, (b) payment intangibles, (c) guaranties, letter-of-credit rights and other supporting
179 obligations relating to the property described in clauses (a) and (b); and (d) all of the proceeds of
180 the property described in clauses (a), (b) and (c). Notwithstanding the foregoing, “Accounts
181 Receivable” shall not include accounts arising from the sale of Operator’s equipment, inventory
182 or other goods, other than accounts arising from the sale of Operator’s inventory in the ordinary
183 course of Operator’s business.

184 “**Affiliate**” is defined in 24 C.F.R. 200.215, or any successor regulation.

185 “**Ancillary Agreement**” means any separate agreement between Borrower and Lender for the
186 purpose of establishing escrows or replacement reserves for the Mortgaged Property, establishing
187 an account to assure the completion of repairs or improvements specified in such agreement, or
188 any other agreement or agreements between Borrower and Lender which provide for the
189 establishment of any other fund, reserve or account including but not limited to those reserves
190 and escrows required by HUD in connection with construction activity, if any, and those reserves
191 and escrows required by HUD in connection with the Project. Such agreements may include, but
192 are not limited to, any sinking fund agreement, which provides for a depreciation reimbursement
193 account to pay future principal payments under the Note, where Medicaid or third-party
194 reimbursement is on a depreciation plus interest basis; any depreciation reserve fund agreement
195 which provides for an escrow or trust account with an approved custodian or trustee established
196 for replacing equipment and for funding of depreciation in accordance with a schedule approved
197 by HUD.

198 “**Approved Use**” means the use of the Project for the operation of the Healthcare Facility as a
199 _____ [insert type of facility – *include all types of care*] [with _____ [beds/units –
200 *insert total beds/units after the completion of the 241(a)*] [of which not less than _____
201 [beds/units] are [to be] in use] and such other uses as may be approved in writing from time to
202 time by HUD based upon a request made by Borrower [, Master Tenant] or Operator, but
203 excluding any uses that are discontinued with the written approval of HUD.

204 “**Assisted Living Facility**” means a public facility, proprietary facility, or facility of a private
205 nonprofit corporation or association that (1) is licensed and regulated by the State (or if there is
206 no state law providing for such licensing and regulation by the State, by the municipality or other
207 political subdivision) in which the facility is located; (2) makes available to residents supportive
208 services to assist the residents in carrying out activities of daily living, and may make available
209 to residents home healthcare services, such as nursing and therapy; and (3) provides separate
210 dwelling units for residents, each of which may contain a full kitchen and bathroom, and which
211 includes common rooms and other facilities appropriate for the provision of supportive service to
212 the residents of the facility.

213 “**Board and Care Home**” means any residential facility providing room, board, and continuous
214 protective oversight that is regulated by a State pursuant to the provisions of Section 1616(e) of
215 the Social Security Act.

216 “**Borrower**” means all persons or entities identified as Borrower in the first paragraph of this
217 Security Instrument, together with any successors, heirs, and assigns (jointly and severally).
218 Borrower shall include any person or entity taking title to the Mortgaged Property whether or not
219 such person or entity assumes the Note. Whenever the term “Borrower” is used herein, the same
220 shall be deemed to include the obligor of the debt secured by this Security Instrument, and so
221 long as the Note is insured or held by HUD, shall also be deemed to be the mortgagor as defined
222 by Program Obligations.

223 “**Borrower-Operator Agreement**” means any agreement relating to the management and
224 operation of the Healthcare Facility by and between Borrower [*or Master Tenant*] and Operator,
225 including any Operator Lease.

226 “**Borrower’s Regulatory Agreement**” means that certain Supplemental Healthcare Regulatory
227 Agreement – Borrower relating to the Project, and made by Borrower for the benefit of HUD.

228 “**Building Loan Agreement**” means the HUD-approved form of the agreement between
229 Borrower and Lender setting forth the terms and conditions for a HUD-insured construction loan.

230 “**Business Day**” means any day other than a Saturday, a Sunday, a federal holiday or other day
231 on which the federal government by law or executive order is closed, or a day on which banking
232 institutions in the State are authorized or obligated by law or executive order to remain closed.

233 “**Contract of Insurance**” is defined in 24 C.F.R. Part 232.800(a).

234 “**Covenant Event of Default**” is defined in Section 22.

235 “**Event of Default**” means a Monetary Event of Default or a Covenant Event of Default, as each
236 is defined in Section 22 and according to the provision of Section 22.

237 “**Fixtures**” means all property or goods that become so related or attached to the Land or the
238 Improvements that an interest arises in them under real property law, whether acquired now or in
239 the future, excluding all resident owned goods and property, and including but not limited to:
240 major movable equipment, machinery, equipment (including medical equipment and systems),
241 engines, boilers, incinerators, installed building materials; systems and equipment for the
242 purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light;
243 antennas, cable, wiring and conduits used in connection with radio, television, computers and
244 computer software, medical systems, security, fire prevention, or fire detection or otherwise used
245 to carry electronic signals; telephone systems and equipment; elevators and related machinery
246 and equipment; fire detection, prevention and extinguishing systems and apparatus; security and
247 access control systems and apparatus; plumbing systems; water heaters, ranges, stoves,
248 microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other
249 appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds,
250 shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings;

251 fences, trees and plants; swimming pools; playground and exercise equipment and classroom
252 furnishings and equipment.

253 “**Governmental Authority**” means any board, commission, department or body of any
254 municipal, county, state, tribal or federal governmental unit, including any United States
255 territorial government, and any public or quasi-public authority, or any subdivision of any of
256 them, that has or acquires jurisdiction over the Mortgaged Property, including the use, operation
257 or improvement of the Mortgaged Property.

258 “**Healthcare Facility**” means that portion of the Project operated on the Land as a Nursing
259 Home, Intermediate Care Facility, Board and Care Home, Assisted Living Facility and/or any
260 other healthcare facility authorized to receive insured mortgage financing pursuant to Section
261 232 of the National Housing Act, as amended, including any commercial space included in the
262 facility.

263 “**Healthcare Facility Working Capital**” means current assets of the Healthcare Facility minus
264 current liabilities of the Healthcare Facility, pursuant to Generally Accepted Accounting
265 Principles, as Program Obligations may further clarify or define.

266 “**HUD**” means the U.S. Department of Housing and Urban Development acting by and through
267 the Secretary in the capacity as insurer or holder of the Loan under the authority of the National
268 Housing Act, as amended, the Department of Housing and Urban Development Act, as amended,
269 or any other federal law or regulation pertaining to the Loan or the Project.

270 “**Impositions**” is defined in Section 8.

271 “**Imposition Deposits**” is defined in Section 8.

272 “**Improvements**” means the buildings, structures, and alterations now constructed or at any time
273 in the future constructed or placed upon the Land, including any future replacements and
274 additions.

275 “**Indebtedness**” means the principal of, interest on, and all other amounts due at any time under
276 the Note or the Loan Documents, including prepayment premiums, late charges, default interest,
277 and advances to protect the security as provided in the Loan Documents.

278 “**Land**” means the estate in realty described in Exhibit A.

279 “**Leases**” means any and all Operator Leases, Master Leases, Residential Agreements, and any
280 other present and future leases, subleases, licenses, concessions or grants or other possessory
281 interests now or hereafter in force, whether oral or written, covering or affecting the Project, or
282 any portion of the Project, and all modifications, extensions or renewals. Any ground lease to the
283 Borrower creating a leasehold interest in the Land that is security for the Loan is not included in
284 this definition.

285 “**Lender**” means the entity identified as “Lender” in the first paragraph of this Security
286 Instrument, or any subsequent holder of the Note, and whenever the term “Lender” is used
287 herein, the same shall be deemed to include the obligee, or the Trustee(s) and the beneficiary of

288 this Security Instrument, and so long as the Loan is insured or held by HUD, shall also be
289 deemed to be the mortgagee as defined by Program Obligations.

290 “**Lien**” is defined in Section 17.

291 “**Loan**” is defined in the opening paragraphs of this Security Instrument.

292 “**Loan Application**” is defined in Section 41.

293 “**Loan Documents**” means this Security Instrument, the Note, the Borrower’s Regulatory
294 Agreement, [*the Master Tenant’s Regulatory Agreement*,] the Operator’s Regulatory Agreement,
295 and all other agreements, instruments, and documents which are now existing or are in the future
296 required by, delivered to, and/or assigned to Lender and/or HUD in connection with or related to
297 the Loan, whether executed or delivered by or on behalf of Borrower or Operator [*or Master*
298 *Tenant*], as such documents may be amended from time to time, provided that the Borrower-
299 Operator Agreement [*and the Master Lease*], and any amendments thereto shall not be
300 considered Loan Documents.

301 [“**Master Lease**” means that certain [*Name of Master Lease*], in which the Healthcare Facility is
302 aggregated with other HUD insured healthcare facilities and leased to the Master Tenant.]

303 [“**Master Tenant**” means _____, a _____ organized and existing under the laws of
304 _____, the master tenant pursuant to the Master Lease.]

305 [“**Master Tenant’s Regulatory Agreement**” means that certain Supplemental Healthcare
306 Regulatory Agreement – Master Tenant, relating to the Project and entered into by Master
307 Tenant for the benefit of HUD.]

308 “**Monetary Event of Default**” is defined in Section 22.

309 “**Mortgaged Property**” means all of Borrower’s present and future right, title and interest in and
310 to all of the following, whether now owned or held or later acquired:

- 311 (1) the Land;
312
313 (2) the Healthcare Facility;
314
315 (3) the Improvements;
316
317 (4) the Fixtures;
318
319 (5) the Personalty;
320
321 (6) all current and future rights, including air rights, development rights, zoning rights
322 and other similar rights or interests, easements, tenements, rights-of-way, strips
323 and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and
324 appurtenances related to or benefiting the Land or the Improvements, or both, and

- 325 all rights-of-way, streets, alleys and roads which may have been or may in the
326 future be vacated;
- 327
- 328 (7) all insurance policies covering any of the Mortgaged Property, and all proceeds
329 paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the
330 Personalty or any other part of the Mortgaged Property, whether or not Borrower
331 obtained the insurance pursuant to Lender's requirement;
- 332
- 333 (8) all awards, payments and other compensation made or to be made by any
334 Governmental Authority with respect to the Land, the Improvements, the
335 Fixtures, the Personalty or any other part of the Mortgaged Property, including
336 any awards or settlements resulting from condemnation proceedings or the total or
337 partial taking of the Land, the Improvements, the Fixtures, the Personalty or any
338 other part of the Mortgaged Property under the power of eminent domain or
339 otherwise and including any conveyance in lieu thereof;
- 340
- 341 (9) all contracts, options and other agreements for the sale of the Land, the
342 Improvements, the Fixtures, the Personalty or any other part of the Mortgaged
343 Property entered into by Borrower now or in the future, including cash or
344 securities deposited to secure performance by parties of their obligations;
- 345
- 346 (10) all proceeds (cash or non-cash), liquidated claims or other consideration from the
347 conversion, voluntary or involuntary, of any of the Mortgaged Property and the
348 right to collect such proceeds, liquidated claims or other consideration;
- 349
- 350 (11) all revenue generated by any portion of the Mortgaged Property and any Leases;
- 351
- 352 (12) all earnings, royalties, instruments, accounts (including any deposit accounts),
353 Accounts Receivable, supporting obligations, issues and profits from the Land,
354 the Improvements, the Healthcare Facility, or any other part of the Mortgaged
355 Property, and all undisbursed proceeds of the Loan;
- 356
- 357 (13) all Imposition Deposits;
- 358
- 359 (14) all refunds or rebates of Impositions by any Governmental Authority or insurance
360 company (other than refunds applicable to periods before the real property tax
361 year in which this Security Instrument is dated);
- 362
- 363 (15) any security deposits under any Lease;
- 364
- 365 (16) all names under or by which any of the above Mortgaged Property may be
366 operated or known, and all trademarks, trade names, and goodwill relating to any
367 of the Mortgaged Property;
- 368
- 369 (17) all deposits and/or escrows held by or on behalf of Lender under Ancillary
370 Agreements;

- 371
372 (18) all awards, payments, settlements or other compensation resulting from litigation
373 involving the Project;
374
375 (19) any and all licenses, [bed authority, and/or certificates of need; *delete when*
376 *jurisdiction does not permit such a lien*] required to operate the Healthcare
377 Facility and receive the benefits and reimbursements under a provider agreement
378 with Medicaid, Medicare, any State or local programs, healthcare insurers or other
379 assistance providers relied upon by HUD to insure this Security Instrument, to the
380 extent allowed by law, and regardless of whether such rights and contracts are
381 held by Borrower or an operator; and
382
383 (20) all receipts, revenues, income and other moneys received by or on behalf of the
384 Healthcare Facility, including all Accounts Receivable, all contributions,
385 donations, gifts, grants, bequests, all revenues derived from the operation of the
386 Healthcare Facility and all rights to receive the same, whether in the form of
387 Accounts Receivable, contract rights, chattel paper, instruments or other rights
388 whether now owned or held or later acquired by or in connection with the
389 operation of the Healthcare Facility.

390 **“Non-Profit Borrower”** means a Borrower that is treated under the firm commitment as a
391 corporation or association organized for purposes other than profit or gain for itself or persons
392 identified therewith, pursuant to Section 501(c)(3) or other applicable provisions of the Internal
393 Revenue Code.

394 **“Note”** means the Supplemental Note executed by Borrower evidencing the Loan described in
395 this Security Instrument, including all schedules, riders, allonges and addenda, as such
396 Supplemental Note may be amended from time to time.

397 **“Notice”** means all notices, demands and other communications under or concerning any of the
398 Loan Documents.

399 **“Nursing Home”** means a public facility, proprietary facility, or facility of a private nonprofit
400 corporation or association, licensed or regulated by the State (or, if there is no State law
401 providing for such licensing and regulation by the State, by the municipality or other political
402 subdivision in which the facility is located), for the accommodation of convalescents or other
403 persons who are not acutely ill and not in need of hospital care but who require skilled nursing
404 care and related medical services, in which such nursing care and medical services are prescribed
405 by, or are performed under the general direction of, persons licensed to provide such care or
406 services in accordance with the laws of the State where the facility is located.

407 **“Operator”** means, except as otherwise approved by HUD, (i) any single asset entity acceptable
408 to HUD that operates the Healthcare Facility, pursuant to a lease, management agreement,
409 operating agreement, or similar contract with the Borrower, or if the Healthcare Facility is
410 aggregated with other health care facilities in connection with a master lease, with the Master
411 Tenant, or (ii) the Borrower in those circumstances in which the Borrower is directly operating

412 the Healthcare Facility. Where the Project has more than one licensed operator, the use of the
413 singular shall include the plural.

414 “**Operator Lease**” means a lease by [Borrower *OR* Master Tenant] to Operator providing for the
415 operation of the Healthcare Facility.

416 “**Operator’s Regulatory Agreement**” means that certain Supplemental Healthcare Regulatory
417 Agreement - Operator, relating to the Project and entered into by Operator for the benefit of
418 HUD.

419 “**Operator’s Security Agreement**” means that certain Supplemental Operator Security
420 Agreement relating to the Project, and made by Operator.

421 “**Personalty**” means all equipment, inventory, and general intangibles associated with the
422 Healthcare Facility and/or the Project. It includes furniture, furnishings, beds, machinery,
423 building materials, appliances, goods, supplies, tools, books, records (whether in written or
424 electronic form), computer equipment (hardware and software) and other tangible or
425 electronically stored personal property (other than Fixtures) that are owned, leased or used now
426 or in the future in connection with the ownership, management or operation of the Healthcare
427 Facility and/or any other portion of the Project, or are located on the Land or in the
428 Improvements, and any operating agreements relating to the Project, and any surveys, plans and
429 specifications and contracts for architectural, engineering and construction services relating to
430 the Project, and all other intangible property and rights relating to the operation of, or used in
431 connection with, the Project, including all certifications, approvals and governmental permits
432 relating to any activities on the Land. Personalty includes all tangible and intangible personal
433 property used in connection with the Healthcare Facility (such as major movable equipment and
434 systems), accounts, licenses, bed authorities, certificates of need required to operate the
435 Healthcare Facility and to receive benefits and reimbursements under provider agreements with
436 Medicaid, Medicare, State and local programs, payments from healthcare insurers and any other
437 assistance providers; all certifications, permits and approvals, instruments, Rents, lease and
438 contract rights, and equipment leases relating to the use, operation, maintenance, repair and
439 improvement of the Healthcare Facility. Generally, intangibles shall also include all cash and
440 cash escrow funds, such as but not limited to: reserve for replacement accounts, debt service
441 reserve accounts, bank accounts, Residual Receipts accounts, and investments.

442 “**Principal**” is defined in 24 C.F.R. 200.215, or any successor regulation.

443 “**Program Obligations**” means (1) all applicable statutes and any regulations issued by HUD
444 pursuant thereto that apply to the Project, including all amendments to such statutes and
445 regulations, as they become effective, except that changes subject to notice and comment
446 rulemaking shall become effective only upon completion of the rulemaking process, and (2) all
447 current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to
448 the Project, and all future updates, changes and amendments thereto, as they become effective,
449 except that changes subject to notice and comment rulemaking shall become effective only upon
450 completion of the rulemaking process, and provided that such future updates, changes and
451 amendments shall be applicable to the Project only to the extent that they interpret, clarify and
452 implement terms in this Security Instrument rather than add or delete provisions from such

453 document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official
454 website: <http://www.hud.gov/offices/adm/hudclips/index.cfm>, or a successor location to that
455 site.

456 **“Project”** means any and all assets of whatever nature or wherever situated related to the Loan,
457 including without limitation, the Mortgaged Property, any Improvements, and any collateral
458 owned by the Operator securing the Loan.

459 **“Property Jurisdiction”** means any applicable jurisdiction in which the Land is located.

460 **“Reasonable Operating Expenses”** means expenses that arise from the operation, maintenance
461 and routine repair of the Project, including all payments and deposits required under this Security
462 Instrument and any Loan Document, and comply with the requirements of 24 C.F.R. 232.1007,
463 or successor regulation.

464 **“Rent”** means all rent due pursuant to any Master Lease or Operator Lease, any payments due
465 pursuant to any Residential Agreement, any other lease payments, revenues, charges, fees and
466 assistance payments arising from the operation of the Project, including but not limited to, if and
467 for so long as applicable, workers' compensation, social security, Medicare, Medicaid, and other
468 third-party reimbursement payments, Accounts Receivable and all payments and income arising
469 from the operation of the Healthcare Facility and/or the provision of services to residents thereof.

470 **“Residential Agreement”** means any lease or other agreement between the Operator and a
471 resident setting forth the terms of the resident's living arrangements and the provision of any
472 related services.

473 **“Residual Receipts”** means certain funds held by a Non-Profit Borrower which are restricted in
474 their use by Program Obligations.

475 **“State”** means the state of the Property Jurisdiction and may include any of the fifty states of the
476 United States of America, Puerto Rico, the District of Columbia, Guam, the Trust Territory of
477 the Pacific Islands, the American Samoa, and the Virgin Islands.

478 **“Surplus Cash”** means any Borrower's cash remaining in Project-related accounts at the close
479 of business on the last day of the Project's semi-annual fiscal period, as further described in
480 Program Obligations.

481 **“Taxes”** means all taxes, assessments, vault rentals and other charges, if any, general, special or
482 otherwise, including all assessments for schools, public betterments and general or local
483 improvements, which are levied, assessed or imposed by any public authority or quasi-public
484 authority, and which, if not paid, could become a lien on the Land or the Improvements.

485 **“Waste”** means a failure to keep the Project in decent, safe and sanitary condition and in good
486 repair. Waste also means the failure to meet certain financial obligations regarding the payment
487 of Taxes and the relinquishment of the possession of Rents. During any period in which HUD
488 insures the Loan or holds a security interest on the Mortgaged Property, Waste is committed
489 when, without Lender's and HUD's express written consent, Borrower:

- 490 (1) physically changes, or permits changes to, the Mortgaged Property,
491 whether negligently or intentionally, in a manner that reduces its value;
- 492 (2) fails to maintain the Mortgaged Property in decent, safe, and sanitary
493 condition and in good repair;
- 494 (3) fails to pay, or cause to be paid, before delinquency any Taxes secured by
495 a lien having priority over this Security Instrument;
- 496 (4) materially fails to comply with covenants in the Note, this Security
497 Instrument, Borrower's Regulatory Agreement, or any Loan Document,
498 respecting physical care, maintenance, construction, abandonment,
499 demolition, or insurance against casualty of the Mortgaged Property; or
- 500 (5) retains possession of Rents to which Lender or its assigns have the right of
501 possession under the terms of the Loan Documents.

502 "UCC Collateral" means any Mortgaged Property which, under applicable law, may be subject
503 to a security interest under the UCC, whether acquired now or in the future, and all products and
504 cash proceeds and non-cash proceeds thereof.

505 2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

506 (a) This Security Instrument is also a security agreement under the Uniform
507 Commercial Code ("UCC") for any of the Mortgaged Property which is UCC Collateral, and
508 Borrower hereby grants to Lender a security interest in the UCC Collateral, subject to the rights
509 of First Lender and HUD under the First Mortgage Documents. Borrower hereby authorizes
510 Lender to file financing statements, continuation statements and amendments, including any
511 deposit account control agreements or similar agreements, in such form as Lender may require to
512 perfect or continue the perfection of this security interest. Borrower agrees to enter into any
513 agreements, in form as Lender may require that the UCC requires to perfect and continue
514 perfection of Lender's security interest in the portion of UCC Collateral that requires Lender
515 control to attain such perfection. Borrower shall pay all filing costs and all costs and expenses of
516 any record searches for financing statements that Lender may require. Without the prior written
517 consent of Lender and HUD, Borrower shall not create or permit to exist any other lien or
518 security interest in any of the UCC Collateral, other than the liens and security interests created
519 under the First Mortgage Documents. Borrower represents and warrants to Lender that, except
520 for UCC filings disclosed to Lender and HUD that are to be released in connection with the
521 closing of the Loan, UCC financing statements filed to perfect liens and security interests created
522 under the First Mortgage Documents, and UCC financing statements otherwise consented to in
523 writing by Lender and HUD, no UCC filings have been made against Borrower, the UCC
524 Collateral, the Mortgaged Property, or the Project prior to the initial or initial/final endorsement
525 of the Note by HUD, and Borrower has taken and shall take no action that would give rise to
526 such UCC filings, except as aforesaid and except for any UCC filings in connection with the
527 acquisition of any Personalty that has been approved in writing by HUD. Borrower also
528 represents and warrants to Lender that, except in connection with the First Mortgage Loan, any
529 Accounts Receivable financing as approved by Lender and HUD or as otherwise permitted by

530 Lender and HUD, Borrower has not entered into, and will not enter into, nor has it permitted nor
531 will it permit, Operator or Master Tenant or any management agent, as applicable, to enter into
532 any agreement with any party other than Lender in conjunction with the present Loan transaction
533 that allows for the perfection of a security interest in any portion of the UCC Collateral.
534 Borrower will promptly notify Lender of any change in its business or principal location, name,
535 or other organizational change that would require a filing under the UCC to continue perfection
536 of Lender's interest, and hereby authorizes Lender to file, and will assist Lender in filing, any
537 forms necessary to continue the effectiveness of existing financing statements or for perfection
538 of Lender's security interest. If an Event of Default has occurred and is continuing, Lender shall
539 have the remedies of a secured party under the UCC, in addition to all remedies provided by this
540 Security Instrument or existing under applicable law. In exercising any remedies, Lender may
541 exercise its remedies against the UCC Collateral separately or together, and in any order, without
542 in any way affecting the availability of Lender's other remedies. This Security Instrument
543 constitutes a fixture filing financing statement with respect to any part of the Mortgaged Property
544 which is or may become a Fixture and which shall be filed in the local real estate records.

545 (b) In addition, to the extent the UCC Collateral may exclude any of the Mortgaged
546 Property, Borrower hereby grants to Lender a security interest in any and all of the present or
547 hereafter acquired Mortgaged Property, and all products, cash proceeds and non-cash proceeds
548 thereof.

549 (c) The Borrower acknowledges and agrees that, in applying the law of any
550 jurisdiction that at any time enacts all or substantially all of the uniform provisions of Revised
551 Article 9 of the UCC (1999 Official Text, as amended), the definition of Mortgaged Property and
552 the above collateral description covers all assets of Borrower.

553 **3. CONTROL OF DEPOSIT ACCOUNTS.** As part of the consideration for the
554 Indebtedness, Borrower has executed, or has caused Operator [or Master Tenant] to execute, one
555 or more deposit account control agreements or similar agreements in a form approved by Lender
556 and HUD, pursuant to which Borrower, [Master Tenant,] or Operator, as applicable,
557 acknowledges Lender as a secured party, and grants to Lender, subject to the rights of First
558 Lender, control (as defined in Section 9-104 of the UCC) of one or more deposit accounts of the
559 Project and all cash, moneys and other property on deposit from time to time therein. Subject to
560 the rights of First Lender, Lender shall exercise such control in accordance with such deposit
561 account control agreements or similar agreements, and Borrower shall continue to execute or
562 cause to be executed such deposit account control agreements or similar agreements with respect
563 to the Project's accounts as required by Lender and HUD.

564 **4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED**
565 **PROPERTY.**

566 (a) As part of the consideration for the Indebtedness, Borrower absolutely and
567 unconditionally assigns and transfers to Lender, subject to the right of First Lender, all of
568 Borrower's rights, title and interest in, to and under the Leases, including Borrower's right,
569 power and authority to modify the terms of any such Lease, or extend or terminate any such
570 Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and
571 assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases,

572 subject to the rights of First Lender. Borrower and Lender intend this assignment of the Leases
573 to be immediately effective and to constitute an absolute present assignment, subject to the rights
574 of First Lender, and not an assignment for additional security only. For purposes of giving effect
575 to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be
576 deemed to be a part of the Mortgaged Property. However, if this present, absolute and
577 unconditional assignment of Leases is not enforceable by its terms under the laws of the Property
578 Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the
579 intention of Borrower that in this circumstance this Security Instrument create and perfect a lien
580 on the Leases in favor of Lender, which lien shall be effective as of the date of this Security
581 Instrument, subject to the rights of First Lender.

582 (b) Until Lender gives Notice to Borrower of Lender's exercise of its rights under this
583 Section 4, Borrower shall have all rights, power and authority granted to Borrower under any
584 Lease (except as otherwise limited by the First Mortgage Documents, this Section or any other
585 provision of this Security Instrument), including the right, power and authority to modify the
586 terms of any Lease or extend or terminate any Lease as such rights are limited or affected by the
587 terms of the First Mortgage Documents, the Loan Documents and Program Obligations. Upon
588 the occurrence of an Event of Default and throughout its continuation, the permission given to
589 Borrower pursuant to the preceding sentence to exercise its rights, power and authority under
590 Leases shall automatically terminate. Should such Event of Default be subsequently cured, the
591 Borrower's aforesaid permission shall be reinstated. Borrower shall comply with and observe
592 Borrower's obligations under all Leases, including Borrower's obligations, if any, pertaining to
593 the maintenance and disposition of security deposits.

594 (c) Borrower acknowledges and agrees that the exercise by Lender, either directly or
595 by its designee, of any of the rights conferred under this Section 4 shall not be construed to make
596 Lender a lender-in-possession of the Mortgaged Property so long as Lender, or an authorized
597 agent of Lender, has not entered into actual possession of the Land and the Improvements. The
598 acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any
599 time or in any event obligate Lender to take any action under this Security Instrument or to
600 expend any money or to incur any expenses. Lender shall not be liable in any way for any injury
601 or damage to person or property sustained by any person or persons, firm or corporation in or
602 about the Mortgaged Property unless Lender is a lender-in-possession. Prior to Lender's actual
603 entry into and taking possession of the Mortgaged Property, Lender shall not (1) be obligated to
604 perform any of the terms, covenants and conditions contained in any Lease (or otherwise have
605 any obligation with respect to any Lease); (2) be obligated to appear in or defend any action or
606 proceeding relating to the Lease or the Mortgaged Property; or (3) be responsible for the
607 operation, control, care, management or repair of the Mortgaged Property or any portion of the
608 Mortgaged Property. The execution of this Security Instrument by Borrower shall constitute
609 conclusive evidence that all responsibility for the operation, control, care, management and
610 repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and
611 taking of possession.

612 (d) Upon delivery of Notice by Lender to Borrower of Lender's exercise of Lender's
613 rights under this Section 4 at any time after the occurrence of an Event of Default, and without
614 the necessity of Lender entering upon and taking and maintaining control of the Mortgaged
615 Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of

616 the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted
617 to Borrower under any Lease, including the right, power and authority to modify the terms of any
618 such Lease, or extend or terminate any such Lease, subject to the rights of First Lender.

619 (e) Borrower shall not receive or accept, nor permit Operator to receive or accept,
620 Rent under any Lease (whether residential or non-residential) for more than two months in
621 advance.

622 **5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER THE LOAN**
623 **DOCUMENTS; PREPAYMENT PREMIUM.** Borrower shall pay the Indebtedness when due
624 in accordance with the terms of the Note and this Security Instrument and shall perform, observe
625 and comply with all other provisions of the Note and this Security Instrument. Borrower shall
626 pay a prepayment premium in connection with certain prepayments of the Indebtedness,
627 including a payment made after Lender's exercise of any right of acceleration of the
628 Indebtedness, as provided in the Note.

629 **6. EXCULPATION.** Except for personal liability expressly provided for in this
630 Security Instrument or in the Note or in the Borrower's Regulatory Agreement, the execution of
631 the Note shall impose no personal liability upon Borrower and [*LIST THE*
632 *INDIVIDUALS/ENTITIES LISTED IN SECTION 38 OF THE BORROWER'S REGULATORY*
633 *AGREEMENT*] for payment of the Indebtedness evidenced thereby and in the Event of Default,
634 the holder of the Note shall look solely to the Mortgaged Property in satisfaction of the
635 Indebtedness and will not seek or obtain any deficiency or personal judgment against Borrower
636 and [*LIST THE INDIVIDUALS/ENTITIES LISTED IN SECTION 38 OF THE BORROWER'S*
637 *REGULATORY AGREEMENT*], except such judgment or decree as may be necessary to
638 foreclose or bar its interest in the Mortgaged Property and all other property mortgaged, pledged,
639 conveyed or assigned to secure payment of the Indebtedness; provided, that nothing in this
640 Section 6 of this Security Instrument and no action so taken shall operate to impair any
641 obligation of Borrower under the Borrower's Regulatory Agreement.

642 **7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.**

643 (a) Borrower shall pay to and deposit with Lender, or shall cause Operator to pay or
644 deposit with Lender, together with and in addition to the monthly payments of interest or of
645 principal and interest payable under the terms of the Note on the first day of each month after the
646 commencement of amortization under the Note, and continuing until the debt secured hereby is
647 paid in full, the following sums:

648 (1) an amount sufficient to provide Lender with funds to pay the next
649 mortgage insurance premium if this Security Instrument and the Note are
650 insured by HUD, or a monthly service charge, if they are held by HUD, as
651 follows:

652 (i) If and so long as the Note is insured under the provisions of the
653 National Housing Act, as amended, an amount sufficient to
654 accumulate in the hands of Lender one month prior to its due date
655 the annual mortgage insurance premium; or

656 (ii) If and so long as the Note and this Security Instrument are held by
657 HUD, a monthly service charge in an amount equal to the lesser of
658 the amount permitted by law or the amount set forth in Program
659 Obligations computed for each successive year beginning with the
660 first day of the month following the date of this Security
661 Instrument, or the first day of the month following assignment, if
662 the Note and this Security Instrument are assigned to HUD without
663 taking into account delinquencies or prepayment; and

664 (2) Subject to Section 7(d) hereof, a sum equal to the ground rents, if any,
665 next due, plus the premiums that will next become due and payable on
666 policies of fire and other property insurance covering the premises covered
667 hereby, plus water rates, Taxes, municipal/government utility charges and
668 special assessments next due on the premises covered hereby (all as
669 estimated by Lender) less all sums already paid therefore divided by the
670 number of months to the date when such ground rents, premiums, water
671 rates, Taxes, municipal/utility charges and special assessments will
672 become delinquent, such sums to be held by Lender in trust to pay said
673 ground rents, premiums, water rates, Taxes, and special assessments;

674 (3) provided that, all payments and deposits mentioned in the two preceding
675 subsections of this Section and all payments to be made under the Note
676 shall be added together and the aggregate amount thereof shall be paid
677 each month in a single payment or deposit to be applied by Lender to the
678 following items in the order set forth:

679 (i) mortgage insurance premium charges under the Contract of
680 Insurance;

681 (ii) subject to Section 7(d) hereof, ground rents, if Lender has required
682 them to be escrowed with Lender, Taxes, special assessments,
683 water rates, municipal/government utility charges, fire and other
684 property insurance premiums;

685 (iii) interest on the Note; and

686 (iv) amortization of the principal of the Note.

687 (b) Subject to Section 7(d) hereof, Borrower shall pay to and deposit, or shall cause
688 Operator to pay or deposit, with Lender all other escrows and deposits, including any reserves
689 for replacements.

690 (c) Borrower shall deposit with Lender any other amounts as may be required by any
691 Ancillary Agreement and shall perform all other obligations of Borrower under each Ancillary
692 Agreement. Ancillary Agreement deposits shall be held in an institution (which may be Lender,
693 if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a
694 federal agency and in accordance with Program Obligations.

695 (d) So long as the First Security Instrument is held or insured by HUD and Borrower
696 has paid to the First Lender the amounts that would otherwise be due to Lender under Section
697 7(a)(2) or 7(b) hereof (including any increase in deposits to the reserve for replacements required
698 to be deposited with the First Lender pursuant to the Borrower's Regulatory Agreement).
699 Borrower shall not be required to pay or deposit such amounts with Lender pursuant to this
700 Security Instrument.

701 **8. IMPOSITION DEPOSITS.**

702 (a) In the event Borrower or Operator fails to pay any sums provided for in this
703 Security Instrument, Lender, at its option, may pay the same. Any excess funds accumulated
704 under Section 7(a) remaining after payment of the items therein mentioned, shall be credited to
705 subsequent monthly payments of the same nature required thereunder; but if any such item shall
706 exceed the estimate therefore, or if Borrower or Operator shall fail to pay any other
707 governmental or municipal charge, Borrower shall forthwith, or shall cause Operator to forthwith
708 make good the deficiency or pay the charge before the same become delinquent or subject to
709 interest or penalties and in default thereof. Lender may pay the same. All sums paid or advanced
710 by Lender and any sums which Lender may be required to advance to pay mortgage insurance
711 premiums shall be added to the Indebtedness and shall bear interest from the date of payment at
712 the rate specified in the Note and shall be due and payable on demand. In case of termination of
713 the Contract of Insurance by prepayment of the Indebtedness in full or otherwise (except as
714 hereinafter provided), accumulations under Section 7(a) not required to pay sums due under
715 Section 7(a)(3) shall be credited to Borrower. If the Mortgaged Property is sold under
716 foreclosure or is otherwise acquired by Lender after an Event of Default, any remaining balance
717 of the accumulations under Section 7(a) shall be credited to the principal under the Note as of the
718 date of the commencement of foreclosure proceedings or as of the date the Mortgaged Property
719 is otherwise acquired; and accumulations under Section 7 shall be likewise credited unless
720 required to pay sums due HUD under Section 7(a)(3). The amounts deposited under Section 7
721 and Section 8 are collectively referred to in this Security Instrument as the "**Imposition**
722 **Deposits**". The obligations of Borrower for which the Imposition Deposits are required are
723 collectively referred to in this Security Instrument as "**Impositions**". Except as provided in
724 Section 7(d) hereof, the amount of the Imposition Deposits shall be sufficient to enable Lender to
725 pay applicable Impositions before the last date upon which such payment may be made without
726 any penalty or interest charge being added. Lender shall maintain records indicating how much
727 of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by
728 Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation
729 of Borrower for which Imposition Deposits are required. Any waiver by Lender of the
730 requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in
731 Lender's discretion, at any time upon Notice to Borrower.

732 (b) Imposition Deposits shall be held in accounts insured or guaranteed by a federal
733 agency and in accordance with Program Obligations. Lender shall apply the Imposition Deposits
734 to pay Impositions so long as no Event of Default has occurred and is continuing. Unless
735 required by Program Obligations, Lender shall not be required to pay Borrower any interest,
736 earnings or profits on the Imposition Deposits with the exception of the reserve for replacements
737 account or Residual Receipts account (if any). Borrower hereby pledges and grants to Lender a
738 security interest in the Imposition Deposits as additional security for all of Borrower's

739 obligations under this Security Instrument and the Note. Any amounts deposited with Lender
740 under Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness.

741 (c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the
742 Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay
743 any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may
744 pay an Imposition according to any bill, statement or estimate from the appropriate public office
745 or insurance company without inquiring into the accuracy of the bill, statement or estimate or
746 into the validity of the Imposition.

747 (d) If at any time the amount of the Imposition Deposits held by Lender (other than
748 the reserves for replacements or Residual Receipts, if any) for payment of a specific Imposition
749 exceeds the amount reasonably deemed necessary by Lender plus one-sixth of such estimate, the
750 excess shall be credited against future installments of Imposition Deposits. If at any time the
751 amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less
752 than the amount reasonably estimated by Lender to be necessary plus one-sixth of such estimate,
753 Borrower shall pay to Lender the amount of the deficiency within fifteen (15) days after Notice
754 from Lender.

755 **9. REGULATORY AGREEMENT.**

756 (a) Borrower and HUD have executed the Borrower's Regulatory Agreement, which
757 is incorporated in and made a part of this Security Instrument. In addition, and without limiting
758 the generality of the foregoing, Borrower will deliver to Lender copies of all reports, financial
759 statements and other information which the Borrower is obligated to provide to HUD pursuant to
760 the Borrower's Regulatory Agreement or otherwise pursuant to the Loan Documents or Program
761 Obligations, not later than the earlier of (i) the date such reports, financial statements or other
762 information are required to be delivered to HUD or (ii) ten (10) days after the Lender or HUD
763 make a request for a report, financial statement or other information. Upon an Event of Default
764 under the Borrower's Regulatory Agreement and upon the request of HUD, Lender, at its option,
765 may declare an Event of Default of this Security Instrument.

766 (b) Borrower shall require Operator to comply with the terms of the Operator's
767 Regulatory Agreement and shall set forth such requirements, or cause such requirements to be
768 set forth, in any Borrower-Operator Agreement. [Borrower shall require Master Tenant to
769 comply with the terms of the Master Tenant's Regulatory Agreement and shall set forth such
770 requirements in any Master Lease.]

771 **10. APPLICATION OF PAYMENTS.** If at any time Lender receives, from
772 Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts
773 due and payable at such time, Lender must apply that payment to amounts then due and payable
774 in the manner and in the order set forth in Section 7(a)(3). Neither Lender's acceptance of an
775 amount that is less than all amounts then due and payable nor Lender's application of such
776 payment in the manner authorized shall constitute or be deemed to constitute either a waiver of
777 the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such
778 amount to the Indebtedness, Borrower's obligations under this Security Instrument and the Note
779 shall remain unchanged.

780 **11. COMPLIANCE WITH LAWS.** Borrower shall comply with all applicable:
781 laws; ordinances; regulations; requirements of any Governmental Authority; lawful covenants
782 and agreements recorded against the Mortgaged Property; so long as the Loan is insured or held
783 by HUD, the Borrower's Regulatory Agreement, and Program Obligations including lead-based
784 paint maintenance requirements of 24 C.F.R. Part 35, subpart G, and any successor regulations;
785 including but not limited to those of the foregoing pertaining to: health and safety; construction
786 of Improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use;
787 Leases; and maintenance and disposition of security deposits; and, with respect to all of the
788 foregoing, all subsequent amendments, revisions, promulgations or enactments. Borrower shall
789 at all times maintain records sufficient to demonstrate compliance with the provisions of this
790 Section 11. Borrower shall take appropriate measures to prevent, and shall not engage in or
791 knowingly permit, any illegal activities at the Mortgaged Property, including those that could
792 endanger residents or visitors, result in damage to the Mortgaged Property, result in forfeiture of
793 the Mortgaged Property, or otherwise impair the lien created by this Security Instrument or
794 Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no
795 portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal
796 activity.

797 **12. USE OF PROPERTY.** Unless permitted by applicable law and approved by
798 Lender, Borrower shall not (a) allow changes in the use for which all or any part of the
799 Mortgaged Property is being used at the time this Security Instrument was executed, (b) convert
800 any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a
801 change in the zoning classification of the Mortgaged Property that results in any change in
802 permitted use that was in effect at the time of initial/final endorsement, (d) establish any
803 condominium or cooperative regime with respect to the Mortgaged Property, (e) materially
804 change any unit configurations or change the number of units in the Mortgaged Property, (f)
805 combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is
806 not part of the Mortgaged Property, (g) subdivide or otherwise split any tax parcel constituting
807 all or any part of the Mortgaged Property, or (h) so long as the Note is insured or held by HUD,
808 permit the Mortgaged Property to be used as transient housing or as a hotel in violation of
809 Section 513 of the National Housing Act, as amended.

810 **13. PROTECTION OF LENDER'S SECURITY.**

811 (a) If Borrower fails to perform any of its obligations under this Security Instrument,
812 Note or Borrower's Regulatory Agreement, or if any action or proceeding is commenced which
813 purports to affect the Mortgaged Property, Lender's security or Lender's rights under this
814 Security Instrument, including eminent domain, insolvency, Waste, code enforcement, civil or
815 criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or
816 reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option
817 may make such appearances, advance such sums and, subject to the rights of First Lender, take
818 such actions as Lender reasonably deems necessary to perform such obligations of Borrower and
819 to protect Lender's interest, including (1) payment of fees and out-of-pocket expenses of
820 attorneys (including fees for litigation at all levels), accountants, inspectors and consultants, (2)
821 entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3)
822 procurement of the insurance required by Section 19, and (4) payment of amounts which
823 Borrower has failed to pay under Section 16 or any other Section of this Security Instrument.

824 (b) Any amounts advanced by Lender for taxes, special assessments, water rates,
825 which are liens prior to this Security Instrument, insuring the Project and mortgage insurance
826 premiums, paid after an Event of Default, shall be added to, and become part of the
827 Indebtedness, and shall be immediately due and payable and shall bear interest from the date of
828 the advance until paid at the interest rate specified in the Note. So long as the Loan is insured or
829 held by HUD, Lender does not have any obligation to make advances except as required under
830 Program Obligations, and any advance by Lender other than as required by Program Obligations
831 requires prior HUD approval before such advance can be added to the Indebtedness.

832 (c) Nothing in Section 13 shall require Lender to incur any expense or take any action
833 to protect its security.

834 **14. INSPECTION.** Upon reasonable notice, Lender and/or HUD, and/or the agents,
835 representatives, and designees of either, may make or cause to be made entries upon and
836 inspections of the Mortgaged Property (including any environmental inspections and tests)
837 during normal business hours, or at any other reasonable time.

838 **15. BOOKS AND RECORDS; FINANCIAL REPORTING.** Borrower shall
839 comply with the books, records, and reporting requirements of the Borrower's Regulatory
840 Agreement.

841 **16. TAXES; OPERATING EXPENSES.**

842 (a) Subject to the provisions of Section 16(c) and Section 16(d), Borrower shall pay,
843 or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or
844 cost for nonpayment.

845 (b) Subject to the provisions of Section 16(c), Borrower shall pay, or cause to be
846 paid, the expenses of operating, managing, maintaining and repairing the Mortgaged Property
847 (including insurance premiums, utilities, repairs and replacements) before the last date upon
848 which each such payment may be made without any penalty or interest charge being added.

849 (c) As long as no Event of Default exists and Borrower has timely delivered to
850 Lender any bills or premium notice that it has received, Borrower shall not be obligated to pay
851 Taxes, insurance premiums or any other individual Imposition to the extent that sufficient
852 Imposition Deposits are held by Lender for the purpose of paying that specific Imposition. If an
853 Event of Default exists, Lender may exercise any rights Lender may have with respect to
854 Imposition Deposits without regard to whether Impositions are then due and payable; provided
855 that so long as the Loan is insured by HUD, Lender's exercise of its rights shall be subject to
856 Program Obligations pertaining to claims for mortgage insurance benefits. Lender shall have no
857 liability to Borrower for failing to pay any Impositions to the extent that any Event of Default
858 has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time
859 an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and
860 premium notice as provided above.

861 (d) Borrower, at its own expense, and, so long as the Loan is insured or held by HUD,
862 in accordance with the Borrower's Regulatory Agreement, may contest by appropriate legal
863 proceedings, conducted diligently and in good faith, the amount or validity of any Imposition

864 other than insurance premiums, if (1) Borrower notifies Lender of the commencement or
865 expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of
866 being sold or forfeited, (3) Borrower deposits or causes Operator to deposit with Lender reserves
867 sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes
868 whatever additional security is required in the proceedings or is reasonably requested by Lender,
869 which may include the delivery to Lender of the reserves established by Borrower to pay the
870 contested Imposition.

871 (e) Borrower shall promptly deliver to Lender a copy of all Notices of, and invoices
872 for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish
873 to Lender receipts evidencing such payments.

874 **17. LIENS; ENCUMBRANCES.**

875 (a) Borrower shall not permit the grant, creation or existence of any mortgage, deed
876 of trust, deed to secure debt, security deed, security interest or other lien or encumbrance
877 (“Lien”) on the Mortgaged Property (other than the lien of this Security Instrument, any tax liens
878 which are imposed before payment is due, any Liens created pursuant to the First Mortgage
879 Documents, or any subordinate liens which are approved by HUD and Lender), whether
880 voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the
881 lien of this Security Instrument.

882 (b) Borrower shall not repay any HUD-approved subordinate Lien from proceeds of
883 the Loan other than from Surplus Cash or Residual Receipts (as both terms are defined in the
884 Borrower’s Regulatory Agreement), except in the case of a subordinate Lien created in
885 connection with an operating loss loan insured pursuant to Section 223(d) of the National
886 Housing Act or a supplement loan insured pursuant to Section 241 of the National Housing Act.

887 **18. PRESERVATION, MANAGEMENT AND MAINTENANCE OF THE**
888 **MORTGAGED PROPERTY.** Borrower (a) shall not commit Waste, (b) shall not abandon the
889 Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner,
890 any damaged part of the Mortgaged Property to the equivalent of its original condition, or such
891 other condition as Lender may approve in writing, whether or not litigation or insurance
892 proceeds or condemnation awards are available to cover any costs of such restoration or repair,
893 (d) shall keep the Mortgaged Property in decent, safe, and sanitary condition and good repair,
894 including the replacement of Personalty and Fixtures with items of equal or better function and
895 quality, all in accordance with Program Obligations, (e) shall provide for qualified management
896 of the Mortgaged Property by a licensed or otherwise qualified entity consistent with Program
897 Obligations and/or any governmental requirements pertaining to operation and licensure, (f) shall
898 give Notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and
899 defend, any action or proceeding that could impair the Mortgaged Property, Lender’s security or
900 Lender’s rights under this Security Instrument, (g) shall not (and shall not permit any Operator,
901 resident or other person to) remove, demolish or alter the Mortgaged Property or any part of the
902 Mortgaged Property except that Borrower may dispose of obsolete or deteriorated Fixtures or
903 Personalty if the same are replaced with like items of the same or greater quality or value, or
904 make minor alterations which do not impair the Mortgaged Property, and (h) so long as the Loan
905 is insured or held by HUD, shall not expend any Project funds except for Reasonable Operating

906 Expenses and necessary repairs and except as permitted by Program Obligations and the
907 Borrower's Regulatory Agreement, without the prior written approval of HUD. Borrower shall
908 cause any operator, master tenant, management agent, as applicable, to comply with the
909 foregoing provisions (a) through (h). So long as the Loan is insured or held by HUD, all
910 expenses incurred by Borrower in connection with the Mortgaged Property shall be incurred in
911 compliance with Program Obligations.

912 **19. PROPERTY AND LIABILITY INSURANCE.**

913 (a) Borrower shall keep the Mortgaged Property insured at all times to the full extent
914 of Program Obligations, as they may be amended from time to time. Further, Borrower shall
915 keep the Mortgaged Property insured at all times against such hazards as Lender may from time
916 to time require, which insurance shall include but not be limited to coverage against loss by fire
917 and allied perils, general boiler and machinery coverage, builders all-risk and business income
918 coverage. Lender's insurance requirements may change from time to time throughout the term
919 of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance,
920 mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not
921 conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the
922 Improvements are located in an area identified by the Federal Emergency Management Agency
923 (or any successor to that agency) as an area having special flood hazards, Borrower shall
924 maintain flood insurance covering the applicable Improvements in an amount at least equal to its
925 development or project cost (less estimated land cost) or to the maximum limit of coverage made
926 available with respect to the particular type of property under the National Flood Insurance Act
927 of 1968, as amended, or its successor statute, whichever is less, provided that the amount of
928 flood insurance need not exceed the outstanding aggregate principal balance of the First Note
929 and the Note, and flood insurance need not be maintained beyond the term of the Note. If
930 Lender determines that flood insurance has not been obtained in the required amount, Lender
931 must notify Borrower of Borrower's obligations to obtain the proper flood insurance. If
932 Borrower does not obtain such insurance within forty-five (45) days of the date of this
933 notification, Lender shall purchase such flood insurance on behalf of Borrower and may charge
934 Borrower for the cost of premiums and fees incurred by Lender in purchasing the flood
935 insurance.

936 (b) All premiums on insurance policies required under Section 19(a) shall be paid in
937 the manner provided in Section 7, unless Lender has designated in writing another method of
938 payment. All such policies shall also be in a form approved by Lender. All policies of property
939 damage insurance shall include a non-contributing, non-reporting mortgage clause in a form
940 approved by Lender, and in favor of Lender (and First Lender and HUD, as their interests
941 appear) and shall name as loss payee First Lender, Lender, and their respective successors and
942 assigns. Lender shall have the right to hold the original policies or duplicate original policies of
943 all insurance required by Section 19(a). Borrower shall promptly deliver to Lender a copy of all
944 renewal and other notices received by Borrower with respect to the policies and all receipts for
945 paid premiums. At least thirty (30) days prior to the expiration date of a policy, Borrower shall
946 deliver to Lender evidence of continuing coverage in form satisfactory to Lender.

947 (c) Borrower shall maintain or shall cause Operator to at all times maintain
948 commercial general and professional liability insurance, workers' compensation insurance and

949 such other liability, errors and omissions and fidelity insurance coverages to the full extent of
950 Program Obligations, as may be amended from time to time. Further, Borrower shall maintain or
951 shall cause Operator to at all times maintain such coverages as Lender may from time to time
952 reasonably require, or shall require any appropriate party to maintain at all times commercial
953 general liability insurance, workers' compensation insurance and such other liability, errors and
954 omissions and fidelity insurance coverages as Lender may from time to time reasonably require
955 or such other insurance coverage as required by Program Obligations.

956 (d) All insurance policies and renewals of insurance policies required by this Section
957 19 shall be in such amounts and for such periods as Lender may from time to time require, and
958 shall be issued by insurance companies satisfactory to Lender and in accordance with Program
959 Obligations. Lender shall have the right to effect insurance in the event Borrower fails to
960 comply with this Section.

961 (e) Borrower shall comply with all insurance requirements and shall not permit any
962 condition to exist on the Mortgaged Property that would invalidate any part of any insurance
963 coverage that this Security Instrument requires Borrower to maintain.

964 (f) In the event of loss, Borrower shall give immediate written Notice to the
965 insurance carrier and to Lender. Subject to the rights of First Lender, Borrower hereby
966 authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust
967 and compromise any claims under policies of property damage insurance, to appear in and
968 prosecute any action arising from such property damage insurance policies, to collect and receive
969 the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses
970 incurred in the collection of such proceeds. This power of attorney is coupled with an interest
971 and therefore is irrevocable. Borrower shall notify Lender of any payment received from any
972 insurer. Subject to the rights of First Lender, Lender shall (1) hold the balance of such proceeds
973 to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property
974 to the equivalent of its original condition or to a condition approved by Lender, or (2) apply the
975 balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the
976 extent Lender determines to apply insurance proceeds to restoration, Lender shall do so in
977 accordance with Lender's then-current policies relating to the restoration of casualty damage on
978 similar healthcare properties; provided that so long as the Loan is insured or held by HUD,
979 insurance proceeds shall be applied as approved by HUD and in accordance with Program
980 Obligations pursuant to Section 19(g) below.

981 (g) Lender shall not exercise its option to apply insurance proceeds to the payment of
982 the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event
983 which, with the giving of Notice or the passage of time, or both, would constitute an Event of
984 Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will
985 be sufficient funds to complete the restoration; (3) Lender determines, in its discretion, that the
986 rental income from the Mortgaged Property after completion of the restoration will be sufficient
987 to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan
988 repayment obligations relating to the Mortgaged Property; and (4) Lender determines, in its
989 discretion, that the restoration will be completed before the earlier of (A) one year before the
990 maturity date of the Note or (B) one year after the date of the loss or casualty. Further, so long
991 as the Loan is insured by HUD, Lender may not exercise its option to apply insurance proceeds

992 to the payment of the Indebtedness without the prior written approval of HUD. If HUD fails to
993 give its approval to the use or application of such funds within sixty (60) days after the written
994 request by Lender, Lender may use or apply such funds for any of the purposes specified herein
995 without the approval of HUD.

996 (h) If the Mortgaged Property is sold at a foreclosure sale or Lender or HUD acquire
997 title to the Mortgaged Property, subject to the rights of First Lender and HUD under the First
998 Mortgage Documents, Lender and HUD, as applicable, shall automatically succeed to all rights
999 of Borrower in and to any insurance policies and unearned insurance premiums and in and to the
1000 proceeds of property damage insurance resulting from any damage to the Mortgaged Property
1001 prior to such sale or acquisition.

1002 **20. CONDEMNATION.**

1003 (a) Borrower shall promptly notify Lender of any action or proceeding relating to any
1004 condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged
1005 Property, whether direct or indirect condemnation. Borrower shall appear in and prosecute or
1006 defend any action or proceeding relating to any condemnation unless otherwise directed by
1007 Lender in writing. Subject to the rights of First Lender, Borrower authorizes and appoints
1008 Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or
1009 Borrower's name, any action or proceeding relating to any condemnation and to settle or
1010 compromise any claim in connection with any condemnation. This power of attorney is coupled
1011 with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall
1012 require Lender to incur any expense or take any action. Subject to the rights of First Lender,
1013 Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to
1014 any award or payment with respect to (1) any condemnation, or any conveyance in lieu of
1015 condemnation, and (2) any damage to the Mortgaged Property caused by governmental action
1016 that does not result in a condemnation.

1017 (b) Subject to the rights of First Lender, all awards of compensation in connection
1018 with condemnation for public use of or a taking of any of the Mortgaged Property shall be paid
1019 to Lender to be applied (1) to fees, costs and expenses (including reasonable attorney's fees)
1020 incurred by Lender; and (2) to the amount due under the Note secured hereby in (i) amounts
1021 equal to the next maturing installment or installments of principal and (ii) with any balance to be
1022 credited to the next payment due under the Note. Subject to the rights of First Lender, after
1023 payment to Lender of all fees, costs and expenses (including reasonable attorney's fees) incurred
1024 by Lender under this Section 20, all awards of damages in connection with any condemnation for
1025 public use of or damage to the Mortgaged Property, shall be paid to Lender to be applied to an
1026 account held for and on behalf of Borrower, which account shall, at the option of Lender, either
1027 be applied to the amount due under the Note as specified in the preceding sentence, or be
1028 disbursed for the restoration. No amount applied to the reduction of the principal amount due in
1029 accordance with this Section 20(b) shall be considered an optional prepayment as the term is
1030 used in this Security Instrument and the Note secured hereby, nor relieve Borrower from making
1031 regular monthly payments commencing on the first day of the first month following the date of
1032 receipt of the award. Subject to the rights of First Lender, Lender is hereby authorized in the
1033 name of Borrower to execute and deliver necessary releases or approvals or to appeal from such
1034 awards.

1035 **21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN**
1036 **BORROWER.**

1037 (a) So long as the Loan is insured or held by HUD, unless permitted by Program
1038 Obligations, Borrower shall not convey, assign, transfer, pledge, hypothecate, encumber or
1039 otherwise dispose of the Mortgaged Property or any interest therein or permit the conveyance,
1040 assignment or transfer of any interest in Borrower (if the effect of such conveyance, assignment
1041 or transfer is the creation or elimination of a Principal) unless permitted by Program Obligations.
1042 Borrower need not obtain the prior written approval of HUD for: (i) conveyance of the
1043 Mortgaged Property at a judicial or non-judicial foreclosure sale under this Security Instrument
1044 or the First Security Instrument; (ii) inclusion of Mortgaged Property in a bankruptcy estate by
1045 operation of law under the United States Bankruptcy Code; (iii) acquisition of an interest by
1046 inheritance or by court decree, or (iv) other transfers permitted by Program Obligations.

1047 (b) If the Loan is no longer insured or held by HUD, Borrower shall not convey,
1048 assign, transfer, pledge, hypothecate, encumber or otherwise dispose of the Mortgaged Property
1049 or any interest therein or permit the conveyance, assignment or transfer of any interest in
1050 Borrower without the prior written approval of Lender in its sole discretion.

1051 **22. EVENTS OF DEFAULT.** The occurrence of any one or more of the following
1052 shall constitute either a “**Monetary Event of Default**” or a “**Covenant Event of Default**” under
1053 this Security Instrument:

1054 **[OPTION A: USE WHEN FIRST SECURITY INSTRUMENT**
1055 **IS ON FORM HUD-94000-ORCF]**

1056
1057 [(a) Monetary Event of Default: Any failure by Borrower to pay or deposit when due
1058 any amount required by (i) the First Note, (ii) the Note, (iii) Section 7(a) or (b) of the First
1059 Security Instrument or (iv) Section 7(a) or (b) of this Security Instrument.]

1060 **[OPTION B: USE WHEN FIRST SECURITY INSTRUMENT**
1061 **IS NOT ON FORM HUD-94000-ORCF]**

1062
1063 [(a) Monetary Event of Default shall include:

1064
1065 (1) any failure by Borrower to pay or deposit when due any amount required
1066 by (i) the First Note, (ii) the Note or (iii) Section 7(a) or (b) of this
1067 Security Instrument or the corresponding provisions of the First Security
1068 Instrument; and

1069
1070 (2) acceleration of the indebtedness secured by the First Security Instrument.]

1071
1072 (b) Covenant Events of Default shall include:

1073 (1) fraud or material misrepresentation or material omission by Borrower, any
1074 of its officers, directors, trustees, general partners, members, managers or

- 1075 any guarantor in connection with (i) the Loan Application for or creation
1076 of the Indebtedness, (ii) any financial statements, or other report or
1077 information provided to Lender or any governmental entity during the
1078 term of the Indebtedness, or (iii) any request for Lender's consent to any
1079 proposed action under this Security Instrument or the Note;
- 1080 (2) the commencement of a forfeiture action or proceeding, whether civil or
1081 criminal, which, in Lender's reasonable judgment, could result in a
1082 forfeiture of the Mortgaged Property or otherwise materially impair the
1083 lien created by this Security Instrument or Lender's interest in the
1084 Mortgaged Property;
- 1085 (3) any material failure by Borrower to perform or comply with any of its
1086 obligations under this Security Instrument (other than those otherwise
1087 specified in this Section 22), as and when required, which continues for a
1088 period of thirty (30) calendar days after Notice of such failure by Lender
1089 to Borrower, Lender shall extend such 30-day period by such time as
1090 Lender reasonably determines is necessary to correct the failure for so
1091 long as Lender determines, in its discretion, that: (i) Borrower is timely
1092 satisfying all payment obligations in the Loan Documents; (ii) none of the
1093 Permits and Approvals is at substantial and imminent risk of being
1094 terminated; (iii) such failure cannot reasonably be corrected during such
1095 30-day period, but can reasonably be corrected in a timely manner; and
1096 (iv) Borrower commences to correct such failure, or cause such correction
1097 to be commenced, during such 30-day period and thereafter diligently and
1098 continuously proceeds to correct, or cause correction of, such failure.
1099 However, no such Notice shall apply in the case of any such material
1100 failure which could, in Lender's judgment, absent immediate exercise by
1101 Lender of a right or remedy under this Security Instrument, result in harm
1102 to Lender or impairment of the Note or this Security Instrument;
- 1103 (4) so long as the Loan is insured or held by HUD, any failure by Borrower to
1104 perform any of its obligations as and when required under the Borrower's
1105 Regulatory Agreement, which failure continues beyond the applicable
1106 cure period, if any, specified in the Borrower's Regulatory Agreement;
1107 however, violations under the terms of the Borrower's Regulatory
1108 Agreement may only be treated as a default under this Security Instrument
1109 if HUD requests Lender to treat them as such;
- 1110 (5) so long as the Loan is insured or held by HUD, any Event of Default
1111 pursuant to the Operator's Regulatory Agreement, provided that such
1112 Event of Default pursuant to the Operator's Regulatory Agreement may
1113 only be treated as a default under this Security Instrument if HUD requests
1114 Lender to treat it as such; and

1115 **[OPTION A: USE WHEN FIRST SECURITY INSTRUMENT**
1116 **IS ON FORM HUD-94000-ORCF]**

1117
1118 [(6) a "Covenant Event of Default" (as defined in the First Security
1119 Instrument) under the First Security Instrument.]

1120 **[OPTION B: USE WHEN FIRST SECURITY INSTRUMENT**
1121 **IS NOT ON FORM HUD-94000-ORCF]**
1122

1123 [(6) a default under the First Security Instrument (other than a default included
1124 within Section 22(a) hereof) which is not cured within any applicable cure
1125 period.]

1126 (c) Lender shall deliver to the Principal(s) of Borrower, Notice, as provided in
1127 Section 31, within five (5) Business Days in each case where Lender has delivered Notice to
1128 Borrower of an Event of Default, in order to provide the Principal(s) an opportunity to cure
1129 either a Monetary Event of Default or a Covenant Event of Default.

1130 **23. REMEDIES CUMULATIVE.** Each right and remedy provided in this Security
1131 Instrument is distinct from all other rights or remedies under this Security Instrument, the Note,
1132 or so long as the Loan is insured or held by HUD, HUD's remedies under the Borrower's
1133 Regulatory Agreement or afforded by applicable law, and each shall be cumulative and may be
1134 exercised concurrently, independently, or successively, in any order.

1135 **24. FORBEARANCE.**

1136 (a) So long as the Loan is insured by HUD, Lender shall not without obtaining the
1137 prior written consent of HUD, take any of the following actions: extend the time for payment of
1138 all or any part of the Indebtedness; reduce the payments due under this Security Instrument or the
1139 Note; release anyone liable for the payment of any amounts under this Security Instrument or the
1140 Note; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness;
1141 join in any extension or subordination agreement; release any Mortgaged Property; take or
1142 release other or additional security; modify the rate of interest or period of amortization of the
1143 Note or change the amount of the monthly installments payable under the Note; and otherwise
1144 modify this Security Instrument or the Note. However, if the Contract of Insurance has been
1145 terminated, Lender may (but shall not be obligated to) agree with Borrower to any of the
1146 aforementioned actions in this Section and Lender shall not have to give Notice to or obtain the
1147 consent of any guarantor or third-party obligor.

1148 (b) Any forbearance by Lender in exercising any right or remedy under the Note, this
1149 Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall
1150 not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of
1151 payment of all or any part of the Indebtedness after the due date of such payment, or in an
1152 amount that is less than the required payment, shall not be a waiver of Lender's right to require
1153 prompt payment when due of all other payments on account of the Indebtedness or to exercise
1154 any right or remedy for any failure to make prompt payment. Enforcement by Lender of any
1155 security for the Indebtedness shall not constitute an election by Lender of remedies so as to
1156 preclude the exercise of any other right available to Lender. Lender's receipt of any proceeds or
1157 awards under Section 19 and Section 20 shall not operate to cure or waive any Event of Default.

1158 **25. LOAN CHARGES.** If any applicable law limiting the amount of interest or
1159 other charges permitted to be collected from Borrower in connection with the Loan is interpreted
1160 so that any interest or other charge provided for in any Loan Document, whether considered
1161 separately or together with other charges provided for in any Loan Document, violates that law,
1162 and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the
1163 extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in
1164 excess of the permitted amounts shall be applied by Lender to reduce the principal of the
1165 Indebtedness. For the purpose of determining whether any applicable law limiting the amount of
1166 interest or other charges permitted to be collected from Borrower has been violated, all
1167 Indebtedness that constitutes interest, as well as all other charges made in connection with the
1168 Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the
1169 stated term of the Note. Unless otherwise required by applicable law, such allocation and
1170 spreading shall be effected in such a manner that the rate of interest so computed is uniform
1171 throughout the stated term of the Note.

1172 **26. WAIVER OF STATUTE OF LIMITATIONS.** To the extent permitted by law,
1173 Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement
1174 of the lien of this Security Instrument or to any action brought to enforce any of the Loan
1175 Documents.

1176 **27. WAIVER OF MARSHALLING.** Notwithstanding the existence of any other
1177 security interests in the Mortgaged Property held by Lender or by any other party, Lender shall
1178 have the right to determine the order in which any or all of the Mortgaged Property shall be
1179 subjected to the remedies provided in this Security Instrument and the Note or applicable law.
1180 Lender shall have the right to determine the order in which any or all portions of the
1181 Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies.
1182 Borrower and any party who now or in the future acquires a security interest in the Mortgaged
1183 Property and who has actual or constructive notice of this Security Instrument waives any and all
1184 right to require the marshalling of assets or to require that any of the Mortgaged Property be sold
1185 in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as
1186 an entirety in connection with the exercise of any of the remedies permitted by applicable law or
1187 provided in this Security Instrument.

1188 **28. FURTHER ASSURANCES.** Borrower shall execute, acknowledge, and deliver,
1189 at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel
1190 certificates, financing statements, transfers and assurances as Lender may require from time to
1191 time in order to better assure, grant, and convey to Lender the rights intended to be granted, now
1192 or in the future, to Lender under this Security Instrument and the Note.

1193 **29. ESTOPPEL CERTIFICATE.** Within ten (10) days after a request from Lender,
1194 Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower,
1195 certifying to Lender or any person designated by Lender, as of the date of such statement, (a) that
1196 the Note, (so long as the Loan is insured by HUD, the Borrower's Regulatory Agreement) and
1197 this Security Instrument are unmodified and in full force and effect (or, if there have been
1198 modifications, that the Note, (so long as the Loan is insured by HUD, the Borrower's Regulatory
1199 Agreement) and this Security Instrument are in full force and effect as modified and setting forth
1200 such modifications); (b) the unpaid principal balance of the Note; (c) the date to which interest

1201 under the Note has been paid; (d) that Borrower is not in default in paying the Indebtedness or in
1202 performing or observing any of the covenants or agreements contained in this Security
1203 Instrument, and the Note and (so long as the Loan is insured or held by HUD, the Borrower's
1204 Regulatory Agreement) (or, if Borrower is in default, describing such default in reasonable
1205 detail); (e) whether or not there are then existing any setoffs or defenses known to Borrower
1206 against the enforcement of any right or remedy of Lender under the Note, (so long as the Loan is
1207 insured or held by HUD, the Borrower's Regulatory Agreement) and this Security Instrument;
1208 and (f) any additional facts requested by Lender.

1209 **30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

1210 (a) This Security Instrument and the Note, if it does not itself expressly identify the
1211 law that is to apply to it, shall be governed by the laws of the Property Jurisdiction, except so
1212 long as the Loan is insured or held by HUD and solely as to rights and remedies of HUD as such
1213 local or state laws may be preempted by federal law.

1214 (b) Borrower agrees that any controversy arising under or in relation to the Note or
1215 this Security Instrument shall be litigated exclusively in the Property Jurisdiction except as, so
1216 long as the Loan is insured or held by HUD and, solely as to rights and remedies of HUD,
1217 federal jurisdiction may be appropriate pursuant to any federal requirements. The State courts,
1218 and with respect to HUD's rights and remedies, federal courts and Governmental Authorities in
1219 the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise
1220 under or in relation to the Note, any security for the Indebtedness, or this Security Instrument.
1221 Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such
1222 litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual
1223 residence or otherwise.

1224 **31. NOTICE.**

1225 (a) All Notices under or concerning this Security Instrument shall be in writing. Each
1226 Notice shall be addressed to the intended recipients at their respective addresses set forth in this
1227 Security Instrument, and shall be deemed given on the earliest to occur of (1) the date when the
1228 Notice is received by the addressee; (2) the first or second Business Day after the Notice is
1229 delivered to a recognized overnight courier service, with arrangements made for payment of
1230 charges for next or second Business Day delivery, respectively; or (3) the third Business Day
1231 after the Notice is deposited in the United States mail with postage prepaid, certified mail, return
1232 receipt requested. Failure of Lender to send Notice to Borrower or its Principal(s) shall not
1233 prevent the exercise of Lender's rights or remedies under this Security Instrument or under the
1234 Loan Documents.

1235 (b) Any party to this Security Instrument may change the address to which Notices
1236 intended for it are to be directed by means of Notice given to the other party in accordance with
1237 this Section 31. Each party agrees that it shall not refuse or reject delivery of any Notice given in
1238 accordance with this Section 31, that it shall acknowledge, in writing, the receipt of any Notice
1239 upon request by the other party and that any Notice rejected or refused by it shall be deemed for
1240 purposes of this Section 31 to have been received by the rejecting party on the date so refused or

1241 rejected, as conclusively established by the records of the U.S. Postal Service or the courier
1242 service.

1243 (c) Any Notice under the Note which does not specify how Notice is to be given shall
1244 be given in accordance with this Section 31.

1245 **BORROWER:**

1246

1247

1248 **PRINCIPAL(S):** *[optional]*

1249

1250

1251 **LENDER:**

1252

1253

1254

1255 **32. SALE OF NOTE; CHANGE IN SERVICER.** The Note or a partial interest in
1256 the Note (together with this Security Instrument) may be sold one or more times without prior
1257 Notice to Borrower. A sale may result in a change of the loan servicer. There also may be one
1258 or more changes of the loan servicer unrelated to a sale of the Note. If there is a sale or transfer
1259 of all or a partial interest in the Note or a change of the loan servicer, Lender shall be responsible
1260 for ensuring that Borrower is given Notice of the sale, transfer and/or change.

1261 **33. SINGLE ASSET BORROWER.** Until the Indebtedness is paid in full or unless
1262 otherwise approved in writing by HUD so long as the Loan is insured or held by HUD, (a)
1263 Borrower shall be a single purpose entity and shall maintain the assets of the Mortgaged Property
1264 in segregated accounts in accordance with the Borrower's Regulatory Agreement and Program
1265 Obligations and (b) Borrower (1) shall not acquire any real or personal property other than the
1266 Mortgaged Property and personal property related to the operation and maintenance of the
1267 Mortgaged Property, and so long as the Loan is insured or held by HUD, except pursuant to the
1268 Borrower's Regulatory Agreement and Program Obligations and (2) shall not own or operate any
1269 business other than the ownership, management and/or operation of the Mortgaged Property, and
1270 so long as the Loan is insured or held by HUD, except pursuant to the Borrower's Regulatory
1271 Agreement and Program Obligations.

1272 **34. SUCCESSORS AND ASSIGNS BOUND.** This Security Instrument shall bind,
1273 and the rights granted by this Security Instrument shall inure to, the respective successors and
1274 assigns of Lender and Borrower.

1275 **35. JOINT AND SEVERAL LIABILITY.** If more than one entity signs this
1276 Security Instrument as Borrower, the obligations of such entities shall be joint and several.

1277 **36. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**

1278 (a) The relationship between Lender and Borrower shall be solely that of creditor and
1279 debtor, respectively, and nothing contained in this Security Instrument shall create any other
1280 relationship between Lender and Borrower.

1281 (b) No creditor of any party to this Security Instrument and no other person (the term
1282 “person” includes, but is not limited to, any commercial or governmental entity or institution)
1283 shall be a third party beneficiary of this Security Instrument, the Note, or so long as the Loan is
1284 insured or held by HUD, the Borrower’s Regulatory Agreement. Without limiting the generality
1285 of the preceding sentence, (1) any servicing arrangement between Lender and any loan servicer
1286 for loss sharing or interim advancement of funds shall constitute a contractual obligation of such
1287 loan servicer that is independent of the obligation of Borrower for the payment of the
1288 Indebtedness, (2) Borrower shall not be a third party beneficiary of any servicing arrangement,
1289 and (3) no payment by the loan servicer under any servicing arrangement shall reduce the
1290 amount of the Indebtedness.

1291 **37. SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any
1292 provision of this Security Instrument shall not affect the validity or enforceability of any other
1293 provision, and all other provisions shall remain in full force and effect. This Security Instrument
1294 contains the entire agreement among the parties as to the rights granted and the obligations
1295 assumed in this Security Instrument. This Security Instrument may not be amended or modified
1296 except by a writing signed by the party against whom enforcement is sought.

1297 **38. RULES OF CONSTRUCTION.** The captions and headings of the Sections of
1298 this Security Instrument are for convenience only and shall be disregarded in construing this
1299 Security Instrument. Any reference in this Security Instrument to an “**Exhibit**” or a “**Section**”
1300 shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit
1301 attached to this Security Instrument or to a Section of this Security Instrument. All Exhibits
1302 attached to or referred to in this Security Instrument are incorporated by reference into this
1303 Security Instrument. Use of the singular in this Security Instrument includes the plural and use
1304 of the plural includes the singular. As used in this Security Instrument, the term “**including**”
1305 means “including, but not limited to.”

1306 **39. LOAN SERVICING.** All actions regarding the servicing of the Note, including
1307 the collection of payments, the giving and receipt of Notice, inspections of the Mortgaged
1308 Property, inspections of books and records, and the granting of consents and approvals, may be
1309 taken by the loan servicer unless Borrower receives Notice to the contrary. If Borrower receives
1310 conflicting Notices regarding the identity of the loan servicer or any other subject, any such
1311 Notice from Lender shall govern; provided that so long as the Loan is insured or held by HUD, if
1312 Borrower receives conflicting Notice regarding the identity of the loan servicer or any other
1313 subject, any such Notice from Lender shall govern unless there is a Notice from HUD and, in all
1314 cases, any Notice from HUD governs notwithstanding any Notice from any other party.

1315 **40. DISCLOSURE OF INFORMATION.** To the extent permitted by law, Lender
1316 may furnish information regarding Borrower or the Mortgaged Property to third parties with an
1317 existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase

1318 or securitization of the Indebtedness, including but not limited to trustees, master servicers,
1319 special servicers, rating agencies, and organizations maintaining databases on the underwriting
1320 and performance of healthcare mortgage loans.

1321 **41. NO CHANGE IN FACTS OR CIRCUMSTANCES.** Borrower certifies that all
1322 information in the application for the Loan submitted to Lender (the “**Loan Application**”) and in
1323 all financial statements, rent rolls, reports, certificates and other documents submitted in
1324 connection with the Loan Application are complete and accurate in all material respects and that
1325 there has been no material adverse change in any fact or circumstance that would make any such
1326 information incomplete or inaccurate. The submission of false or incomplete information shall
1327 be a Covenant Event of Default.

1328 **42. ESTOPPEL.** The Lender is not the agent of HUD. Any action by Lender in
1329 exercising any right or remedy under this Security Instrument shall not be a waiver or preclude
1330 the exercise by HUD of any right or remedy which HUD might have under the Borrower’s
1331 Regulatory Agreement or other Program Obligations.

1332 **43. ACCELERATION; REMEDIES.** If a Monetary Event of Default occurs and is
1333 continuing for a period of thirty (30) days, Lender, at Lender’s option, may declare the
1334 Indebtedness to be immediately due and payable without further demand, and may invoke the
1335 power of sale and any other remedies permitted by applicable law or provided in this Security
1336 Instrument or in the Note. Following a Covenant Event of Default, Lender, at Lender’s option,
1337 but so long as the Loan is insured or held by HUD, only after receipt of the prior written
1338 approval of HUD, may declare the Indebtedness to be immediately due and payable without
1339 further demand, and may invoke the power of sale and any other remedies permitted by
1340 applicable law or provided in this Security Instrument or in the Note, or seek the appointment of
1341 a receiver for the Healthcare Facility. Borrower acknowledges that the power of sale granted in
1342 this Security Instrument may be exercised by Lender without prior judicial hearing. Lender shall
1343 be entitled to collect all costs and expenses incurred in pursuing such remedies, including
1344 reasonable attorneys’ fees (including but not limited to appellate litigation), costs of
1345 documentary evidence, abstracts and title reports.

1346 ***[INSERT PROVISIONS PERTAINING TO FORECLOSURE AND/OR SALE AS***
1347 ***APPROPRIATE UNDER STATE LAW IN A STATE-SPECIFIC ADDENDUM.]***

1348 **44. FEDERAL REMEDIES.** In addition to any rights and remedies set forth in the
1349 Borrower’s Regulatory Agreement, HUD has rights and remedies under federal law so long as
1350 HUD is the insurer or holder of the Loan, including but not limited to the right to foreclose
1351 pursuant to the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701 *et seq.*, as
1352 amended, when HUD is the holder of the Note.

1353 **45. REMEDIES FOR WASTE.** In addition to any other rights and remedies set
1354 forth in the Note and this Security Instrument or those available under applicable law, including
1355 exemplary damages where permitted, the following remedies for Waste by Borrower are
1356 available to Lender as necessary to give complete redress to Lender for Lender’s loss or damage:

1357 (a) the exercise of the remedies available to Lender during the existence of a
1358 Covenant Event of Default, as set forth in Section 43 of this Security Instrument;

1359 (b) an injunction prohibiting future Waste or requiring correction of Waste already
1360 committed, but only to the extent that Waste has impaired or threatens to impair Lender's
1361 security; and

1362 (c) recovery of damages, limited by the amount of Waste, to the extent that Waste has
1363 impaired Lender's security. So long as the Loan is insured or held by HUD, any recovery of
1364 damages by Lender or HUD for Waste shall be applied, at the sole discretion of HUD, (1) to
1365 fees, costs and expenses (including reasonable attorneys' fees) incurred by Lender; (2) to remedy
1366 Waste of the Mortgaged Property, (3) to the Indebtedness or (4) for any other purpose designated
1367 by HUD.

1368 **46. TERMINATION OF HUD RIGHTS AND REFERENCES.** At such time as
1369 HUD no longer insures or holds the Note, (a) all rights and responsibilities of HUD shall
1370 conclude, all mortgage insurance and references to mortgage insurance premiums, all references
1371 to HUD, Ginnie Mae and Program Obligations and related terms and provisions shall cease, and
1372 all rights and obligations of HUD shall terminate; (b) all obligations and responsibilities of
1373 Borrower to HUD shall likewise terminate; and (c) all obligations and responsibilities of Lender
1374 to HUD shall likewise terminate; provided, however, nothing contained in this Section 46, shall
1375 in any fashion (i) discharge Borrower from any obligations to HUD under the Borrower's
1376 Regulatory Agreement or Program Obligations or Lender from any obligations to HUD under
1377 Program Obligations, which occurred prior to termination of the Contract of Insurance or (ii)
1378 discharge Borrower from any obligations under the First Mortgage Documents. The provisions
1379 of this Section 46 shall be given effect automatically upon the termination of the Contract of
1380 Insurance or the transfer of this Security Instrument by HUD to another party, provided that upon
1381 the request of Borrower, Lender or the party to whom this Security Instrument has been
1382 transferred, at no cost to HUD, HUD shall execute such documents as may be reasonably
1383 requested to confirm the provisions of this Section 46.

1384 **47. CONSTRUCTION FINANCING [IF APPLICABLE].** The Indebtedness
1385 represents funds to be used in the construction of certain Improvements on the Land, in
1386 accordance with the Building Loan Agreement which is incorporated herein by reference to the
1387 same extent and effect as if fully set forth and made herein (provided, however, that if and to the
1388 extent that the Building Loan Agreement is inconsistent herewith, this Security Instrument shall
1389 govern). If the construction of the Improvements to be made pursuant to the Building Loan
1390 Agreement are not made in accordance with the terms of said Building Loan Agreement, or
1391 Borrower otherwise defaults under the Building Loan Agreement, Lender, after due Notice to
1392 Borrower, or any subsequent owner, is hereby vested with full and complete authority to enter
1393 upon the Land to employ watchmen to protect such Improvements from depredation or injury
1394 and to preserve and protect the Personalty therein, to continue any and all outstanding contracts
1395 for the erection and completion of said Improvements, to make and enter into any contracts and
1396 obligations wherever necessary, either in its own name or in the name of Borrower, or other
1397 owner, and to pay and discharge all debts, obligations, and liabilities incurred thereby. All such
1398 sums so advanced by Lender (exclusive of advances of the principal of the Indebtedness) shall be
1399 added to the principal of the Indebtedness secured hereby and all shall be secured by this

1400 Security Instrument and shall be due and payable on demand with interest at the rate provided in
1401 the Note, but no such advances shall be insured unless same are specifically approved by HUD
1402 prior to the making thereof. The Indebtedness shall, at the option of Lender or holder of this
1403 Security Instrument and the Note, become due and payable on the failure of Borrower, or other
1404 owner, to keep and perform any of the covenants, conditions and agreements of the Building
1405 Loan Agreement. This covenant shall be terminated upon the completion of the Improvements
1406 to the satisfaction of Lender and the making of the final advance as provided in the Building
1407 Loan Agreement.

1408 **48. ENVIRONMENTAL HAZARDS.**

1409 *[INSERT PROVISIONS AS NEEDED TO COMPLY WITH STATE ENVIRONMENTAL LAW IN*
1410 *STATE-SPECIFIC ADDENDUM.]*

1411 (a) Definitions:

1412 (1) **“Hazardous Materials”** means petroleum and petroleum products and
1413 compounds containing them, including gasoline, diesel fuel and oil;
1414 explosives; flammable materials; radioactive materials; polychlorinated
1415 biphenyls (**“PCBs”**) and compounds containing them; lead and lead-based
1416 paint; asbestos or asbestos-containing materials in any form that is or
1417 could become friable; underground or above-ground storage tanks,
1418 whether empty or containing any substance; any substance the presence of
1419 which on the Mortgaged Property is prohibited by any Governmental
1420 Authority; any substance that requires special handling; and any other
1421 material or substance now or in the future defined as a “hazardous
1422 substance,” “hazardous material,” “hazardous waste,” “toxic substance,”
1423 toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any
1424 Hazardous Materials Law.

1425 (2) **“Hazardous Materials Laws”** means all federal, state, and local laws,
1426 ordinances and regulations and standards, rules, policies and other
1427 governmental requirements, administrative rulings and court judgments
1428 and decrees in effect now or in the future and including all amendments
1429 that relate to Hazardous Materials and apply to Borrower or to the
1430 Mortgaged Property. Hazardous Materials Laws include, but are not
1431 limited to, the Comprehensive Environmental Response, Compensation
1432 and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource
1433 Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the
1434 Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean
1435 Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials
1436 Transportation Act, 49 U.S.C. Section 5101, *et seq.*, and their state
1437 analogs.

1438 (3) **“Environmental Permit”** means any permit, license, or other
1439 authorization issued under any Hazardous Materials Law with respect to

1440 any activities or businesses conducted on or in relation to the Mortgaged
1441 Property.

1442 (b) Except for (1) matters covered by a written program of operations and
1443 maintenance approved in writing by Lender (“**O&M Program**”), (2) matters described in
1444 subsection (c) of this Section 48; or (3) (for so long as the Loan is insured or held by HUD)
1445 matters covered by Program Obligations that may differ from this Section 48 (with respect to
1446 lead based paint requirements, for example), Borrower shall not cause or permit any of the
1447 following:

1448 (i) any occurrence or condition on the Mortgaged Property or any other
1449 property of Borrower that is adjacent to the Mortgaged Property, which
1450 occurrence or condition is or may be in violation of Hazardous Materials
1451 Laws; or

1452 (ii) any violation of or noncompliance with the terms of any Environmental
1453 Permit with respect to the Mortgaged Property or any property of
1454 Borrower that is adjacent to the Mortgaged Property.

1455 The matters described in clauses (i) and (ii) above are referred to collectively in this Section 48
1456 as “**Prohibited Activities or Conditions.**”

1457 (c) Prohibited Activities or Conditions shall not include the safe and lawful use and
1458 storage of quantities of (1) supplies, cleaning materials and petroleum products customarily used
1459 in the operation and maintenance of comparable healthcare properties, (2) cleaning materials,
1460 personal grooming items and other items sold in containers for consumer use and used by
1461 residents and occupants of residential dwelling units in the Mortgaged Property, and (3)
1462 petroleum products used in the operation and maintenance of motor vehicles and motor-operated
1463 equipment from time to time located on the Mortgaged Property’s parking areas, so long as all of
1464 the foregoing are used, stored, handled, transported and disposed of in compliance with
1465 Hazardous Materials Laws.

1466 (d) Borrower shall take all commercially reasonable actions (including the inclusion
1467 of appropriate provisions in any Leases executed after the date of this Security Instrument) to
1468 prevent its employees, agents, and contractors, and all residents and other occupants from
1469 causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow
1470 the sublease or use of all or any portion of the Mortgaged Property to any resident or sublessee
1471 for nonresidential use by any user that, in the ordinary course of its business, would cause or
1472 permit any Prohibited Activities or Conditions.

1473 (e) If an O&M Program has been established with respect to Hazardous Materials,
1474 Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors
1475 of Borrower and any other persons encompassed by the O&M Program and present on the
1476 Mortgaged Property to comply with the O&M Program. All costs of performance of Borrower’s
1477 obligations under any O&M Program shall be paid by Borrower, and Lender’s out-of-pocket
1478 costs incurred in connection with the monitoring and review of the O&M Program and
1479 Borrower’s performance shall be paid by Borrower upon demand by Lender. Any such out-of-

1480 pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of
1481 the Indebtedness as provided in Section 13; provided that so long as the Loan is insured by HUD,
1482 no advances made by Lender under this subsection (e) shall become an additional part of the
1483 Indebtedness unless such advances receive the prior written approval of HUD and provided
1484 further that unless approved by HUD, Lender shall have no obligation to make any such
1485 advances.

1486 (f) Borrower represents and warrants to Lender that, except as previously disclosed
1487 by Borrower to Lender in writing:

1488 (1) Borrower has not at any time engaged in, caused or permitted any
1489 Prohibited Activities or Conditions;

1490 (2) to the best of Borrower's knowledge after reasonable and diligent inquiry,
1491 no Prohibited Activities or Conditions exist or have existed;

1492 (3) the Mortgaged Property does not now contain any underground storage
1493 tanks, and, to the best of Borrower's knowledge after reasonable and
1494 diligent inquiry, the Mortgaged Property has not contained any
1495 underground storage tanks in the past. If there is an underground storage
1496 tank located on the Mortgaged Property that has been previously disclosed
1497 by Borrower to Lender in writing, that tank complies with all requirements
1498 of Hazardous Materials Laws;

1499 (4) Borrower has complied with all Hazardous Materials Laws, including all
1500 requirements for notification regarding releases of Hazardous Materials.
1501 Without limiting the generality of the foregoing, Borrower has obtained all
1502 Environmental Permits required for the operation of the Mortgaged
1503 Property in accordance with Hazardous Materials Laws now in effect and
1504 all such Environmental Permits are in full force and effect; no event has
1505 occurred with respect to the Mortgaged Property that constitutes, or with
1506 the passing of time or the giving of Notice would constitute,
1507 noncompliance with the terms of any Environmental Permit;

1508 (5) to the best of Borrower's knowledge after reasonable and diligent inquiry,
1509 there are no actions, suits, claims or proceedings, pending or threatened,
1510 that involve the Mortgaged Property and allege, arise out of, or relate to
1511 any Prohibited Activities or Conditions; and

1512 (6) Borrower has not received any complaint, order, notice of violation or
1513 other communication from any Governmental Authority with regard to air
1514 emissions, water discharges, noise emissions or Hazardous Materials, or
1515 any other environmental, health or safety matters affecting the Mortgaged
1516 Property or any other property of Borrower that is adjacent to the
1517 Mortgaged Property that have not previously been resolved legally.

1518 The representations and warranties in this Section 48 shall be continuing representations and
1519 warranties that shall be deemed to be made by Borrower throughout the term of the Loan, until
1520 the Indebtedness has been paid in full.

1521 (g) Borrower shall promptly notify Lender in writing upon the occurrence of any of
1522 the following events:

- 1523 (1) Borrower's discovery of any Prohibited Activities or Conditions;
- 1524 (2) Borrower's receipt of or knowledge of any complaint, order, notice of
1525 violation or other communication from any Governmental Authority or
1526 other person with regard to present or future alleged Prohibited Activities
1527 or Conditions or any other environmental, health or safety matters
1528 affecting the Mortgaged Property or any other property of Borrower that is
1529 adjacent to the Mortgaged Property; and
- 1530 (3) any representation or warranty in this Section 48 becoming untrue after
1531 the date of this Security Instrument.

1532 Any such Notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any
1533 obligation under this Security Instrument, the Note, or any other Loan Document.

1534 (h) Borrower shall pay promptly the costs of any environmental inspections, tests or
1535 audits ("**Environmental Inspections**") required by Lender in connection with any foreclosure or
1536 deed in lieu of foreclosure, or as a condition of Lender's consent to any transfer under Section
1537 21, or required by Lender following a reasonable determination by Lender that Prohibited
1538 Activities or Conditions may exist. Any such costs incurred by Lender (including the fees and
1539 out-of-pocket costs of attorneys and technical consultants whether incurred in connection with
1540 any judicial (appellate or otherwise) or administrative process or otherwise) which Borrower
1541 fails to pay promptly shall become an additional part of the Indebtedness as provided in Section
1542 13; provided that so long as the Loan is insured by HUD, no advances made by Lender under
1543 this subsection (h) shall become an additional part of the Indebtedness unless such advances
1544 receive the prior written approval of HUD and provided further that unless approved by HUD,
1545 Lender shall have no obligation to make such further advances. The results of all Environmental
1546 Inspections made by Lender shall at all times remain the property of Lender and Lender shall
1547 have no obligation to disclose or otherwise make available to any party other than Borrower, and
1548 so long as the Loan is insured by HUD, to HUD, such results or any other information obtained
1549 by Lender in connection with its Environmental Inspections. Lender hereby reserves the right,
1550 and Borrower hereby expressly authorizes Lender, to make available to any party, including any
1551 prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any
1552 Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower
1553 consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the
1554 results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender
1555 cannot control or otherwise assure the truthfulness or accuracy of the results of any of its
1556 Environmental Inspections and that the release of such results to prospective bidders at a
1557 foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the
1558 amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability

1559 whatsoever as a result of delivering the results of any of its Environmental Inspections to any
1560 third party, and Borrower hereby releases and forever discharges Lender from any and all claims,
1561 damages, or causes of action, arising out of, connected with or incidental to the results of, the
1562 delivery of any of Lender’s Environmental Inspections.

1563 (i) If any investigation, site monitoring, containment, clean-up, restoration or other
1564 remedial work (“**Remedial Work**”) is necessary to comply with any Hazardous Materials Law
1565 that has or acquires jurisdiction over the Mortgaged Property or the use, operation or
1566 improvement of the Mortgaged Property under any Hazardous Materials Law, Borrower shall, by
1567 the earlier of (1) the applicable deadline required by the Hazardous Materials Law or (2) thirty
1568 (30) days after Notice from Lender demanding such action, begin performing the Remedial
1569 Work, and thereafter diligently prosecute it to completion, and shall in any event complete the
1570 work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on
1571 a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option,
1572 cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on
1573 demand for the cost of doing so. So long as the Loan is insured by HUD, no advances made by
1574 Lender under this subsection (i) shall become part of the Indebtedness as provided in Section 13
1575 unless such advances receive the prior written approval of HUD and provided further that unless
1576 approved by HUD, Lender shall have no obligation to make any such advances.

1577 (j) Borrower shall cooperate with any inquiry by any Governmental Authority and
1578 shall comply with any governmental or judicial order which arises from any alleged Prohibited
1579 Activities or Conditions.

1580 (k) Borrower shall indemnify [if Borrower is located in a state that requires an
1581 indemnification agreement separate and apart from this Security Instrument, Borrower shall
1582 provide said indemnification agreement to Lender], hold harmless and defend (1) Lender, (2) any
1583 prior owner or holder of the Note, (3) the loan servicer, (4) any prior loan servicer, (5) the
1584 officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (6)
1585 the heirs, legal representatives, successors and assigns of each of the foregoing (each an
1586 “**Indemnitee**”, and collectively, “**Indemnitees**”) from and against all proceedings, claims,
1587 damages, penalties and costs (whether initiated or sought by Governmental Authorities or private
1588 parties), including fees and out of pocket expenses of attorneys and expert witnesses,
1589 investigatory fees, and remediation costs, whether incurred in connection with any judicial
1590 (including appellate) or administrative process or otherwise, arising directly or indirectly from
1591 any of the following except where the Mortgaged Property became contaminated subsequent to
1592 any transfer of ownership which was approved in writing by Lender (and so long as the Loan is
1593 insured or held by HUD, by HUD), provided such transferee assumes in writing all obligations
1594 of Borrower with respect to Prohibited Activities or Conditions:

1595 (i) any breach of any representation or warranty of Borrower in this Section
1596 48;

1597 (ii) any failure by Borrower to perform or comply with any of its obligations
1598 under this Section 48;

- 1599 (iii) the existence or alleged existence of any Prohibited Activities or
1600 Conditions;
- 1601 (iv) the actual or alleged violation of any Hazardous Materials Law.
- 1602 (l) Counsel selected by Borrower to defend Indemnitees shall be subject to the
1603 approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal
1604 or administrative proceeding at Borrower's expense.
- 1605 (m) Borrower shall not, without the prior written consent of those Indemnitees who
1606 are named as parties to a claim or legal or administrative proceeding ("**Claim**"), settle or
1607 compromise the Claim if the settlement (1) results in the entry of any judgment that does not
1608 include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written
1609 release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially
1610 and adversely affect Lender, as determined by Lender in its discretion.
- 1611 (n) Borrower's obligation to indemnify the Indemnitees shall not be limited or
1612 impaired by any of the following, or by any failure of Borrower or any guarantor to receive
1613 Notice of or consideration for any of the following:
- 1614 (1) any amendment or modification of any Loan Document;
- 1615 (2) any extensions of time for performance required by any Loan Document;
- 1616 (3) the accuracy or inaccuracy of any representations and warranties made by
1617 Borrower under this Security Instrument or any other Loan Document;
- 1618 (4) the release of Borrower or any other person, by Lender or by operation of
1619 law, from performance of any obligation under any Loan Document;
- 1620 (5) the release or substitution in whole or in part of any security for the
1621 Indebtedness; and
- 1622 (6) Lender's failure to properly perfect any lien or security interest
1623 given as security for the Indebtedness.
- 1624 (o) Borrower shall, at its own cost and expense, do all of the following:
- 1625 (1) pay or satisfy any judgment or decree that may be entered against any
1626 Indemnitee or Indemnitees in any legal or administrative proceeding
1627 incident to any matters against which Indemnitees are entitled to be
1628 indemnified under this Section 48;
- 1629 (2) reimburse Indemnitees for any expenses paid or incurred in connection
1630 with any matters against which Indemnitees are entitled to be indemnified
1631 under this Section 48; and

1632 (3) reimburse Indemnitees for any and all expenses, including fees and out-of-
1633 pocket expenses of attorneys and expert witnesses, paid or incurred in
1634 connection with the enforcement by Indemnitees of their rights under this
1635 Section 48, or in monitoring and participating in any legal (including
1636 appellate) or administrative proceeding.

1637 (p) In any circumstances in which the indemnity under this Section 48 applies,
1638 Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any
1639 claim or legal or administrative proceeding and Lender, with the prior written consent of
1640 Borrower (which shall not be unreasonably withheld, delayed or conditioned) and First Lender,
1641 may settle or compromise any action or legal or administrative proceeding. Borrower shall
1642 reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs
1643 of settlements entered into in good faith, and the fees and out of pocket expenses of such
1644 attorneys (including but not limited to appellate litigation) and consultants.

1645 (q) The provisions of this Section 48 shall be in addition to any and all other
1646 obligations and liabilities that Borrower may have under applicable law or under other Loan
1647 Documents, and each Indemnitee shall be entitled to indemnification under this Section 48
1648 without regard to whether Lender or that Indemnitee has exercised any rights against the
1649 Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued
1650 any other rights available under the Loan Documents or applicable law. If Borrower consists of
1651 more than one entity, the obligation of those entities to indemnify the Indemnitees under this
1652 Section 48 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees
1653 under this Section 48 shall survive any repayment or discharge of the Indebtedness, any
1654 foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and
1655 any release of record of the lien of this Security Instrument. Notwithstanding anything in
1656 Section 48 to the contrary, so long as the Loan is insured or held by HUD, indemnification costs
1657 and reimbursements to Lender or to any or all Indemnitees shall be paid only from the available
1658 proceeds of an appropriate insurance policy or from Surplus Cash (if applicable) or other escrow
1659 accounts.

1660 (r) So long as the Loan is insured or held by HUD, all references to Lender in this
1661 Section 48 shall also be construed to refer to HUD as its interest appears (solely as determined
1662 by HUD) and all notifications to Lender must also be made to HUD and all Lender approvals
1663 and exercises of discretion by Lender under this Section 48 must first have the prior written
1664 approval of HUD, provided, that, so long as the Loan is insured or held by HUD, the reference to
1665 Lender as an Indemnitee shall be construed to refer to HUD, and Borrower's obligations to
1666 indemnify HUD as an Indemnitee shall remain in effect in accordance with this Section 48,
1667 notwithstanding the termination or expiration of insurance of the Loan by HUD.

1668 (s) To the extent any HUD environmental requirements or standards are inconsistent
1669 or conflict with the provisions of this Section 48, the HUD requirements or standards shall
1670 control so long as the Loan is insured or held by HUD.

1671 **49. COUNTERPART SIGNATURES.** This document may be executed in
1672 counterpart.

1683

EXHIBIT A

1684

[LEGAL DESCRIPTION OF THE LAND]

1685

DRAFT

1686

EXHIBIT B

1687

Modifications to Security Instrument

1688 The following modifications are made to the text of the Security Instrument of which this Exhibit
1689 is a part:

1690

1691

1692

1693

1694

1695

1696

1697

1698

1699

1700

1701

1702

1703

1704

1705

1706

1707

1708

1709

1710

1711

1712

1713

DRAFT