

**Security Instrument/
Mortgage/Deed of Trust
Section 232**

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

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

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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.

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Recording requested by:

After recording return to:

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)

FHA Project Number:
Project Name:

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49 **HEALTHCARE [MORTGAGE,**
50 **DEED OF TRUST, DEED TO SECURE DEBT, SECURITY DEED,**
51 **OR OTHER DESIGNATION AS APPROPRIATE IN JURISDICTION]** *fill in appropriate*
52 *designation*
53 **ASSIGNMENT OF LEASES, RENTS AND REVENUE AND**
54 **SECURITY AGREEMENT**

55 THIS HEALTHCARE [MORTGAGE, DEED OF TRUST, DEED TO SECURE DEBT,
56 SECURITY DEED, OR OTHER DESIGNATION AS APPROPRIATE IN JURISDICTION] *fill*
57 *in appropriate designation*, ASSIGNMENT OF LEASES, RENTS AND REVENUE AND
58 SECURITY AGREEMENT, WHICH, FOR AS LONG AS THE LOAN IS INSURED OR
59 HELD BY HUD, SHALL BE DEEMED TO BE THE MORTGAGE AS DEFINED BY
60 PROGRAM OBLIGATIONS (this “**Security Instrument**”), is made as of this ___ day
61 of ___, 20___, [among][between] ___, a ___ organized and existing under
62 the laws of ___, whose address is ___, as grantor, trustor and borrower
63 (“**Borrower**”), to ___, [as trustee (“**Trustee**”), a ___ organized and existing under
64 the laws of ___, OR an individual whose address is ___, for the benefit of
65 ___, as beneficiary, and ___,] [*DELETE PRIOR LANGUAGE CONCERNING A*
66 *TRUSTEE IF NOT APPLICABLE*] as Lender (“**Lender**”), a ___ organized and existing
67 under the laws of ___, whose address is ___.

68
69 **[ALTERNATIVE A: DEED OF TRUST GRANTING CLAUSE; DELETE IF NOT**
70 **APPLICABLE.**

71
72 Borrower, in consideration of the Indebtedness and the trust created by this Security Instrument,
73 irrevocably grants, conveys and assigns to Trustee and Trustee’s successors and assigns, in trust,
74 with power of sale, the Mortgaged Property, including the Land located in ___ County,
75 State of ___ and described in Exhibit A, attached to and incorporated in this Security
76 Instrument, to have and to hold the Mortgaged Property unto Trustee and Trustee’s successors
77 and assigns.]

78
79 **[ALTERNATIVE B: MORTGAGE GRANTING CLAUSE; DELETE IF NOT**
80 **APPLICABLE.**

81
82 Borrower, in consideration of the Indebtedness and the security interest created by this Security
83 Instrument, irrevocably mortgages, grants, conveys and assigns to Lender and Lender’s
84 successors and assigns, with power of sale, the Mortgaged Property, including the Land located
85 in ___ County, State of ___ and described in Exhibit A, attached to and
86 incorporated in this Security Instrument, to have and to hold the Mortgaged Property unto
87 Lender and Lender’s successors and assigns.]

88
89 **[ALTERNATIVE C: DEED TO SECURE DEBT, – GEORGIA ONLY - GRANTING**
90 **CLAUSE; DELETE IF NOT APPLICABLE.**

91
92 Borrower, in consideration of the Indebtedness and the security interest created by this
93 Security Instrument, irrevocably grants, conveys and assigns to Lender and Lender’s successors
94 and assigns, with power of sale, the Mortgaged Property, including the Land located in
95 ___ County, State of Georgia and described in Exhibit A, attached to and incorporated in
96 this Security Instrument, to have and to hold the Mortgaged Property unto Lender and Lender’s
97 successors and assigns. As used in this Security Instrument, the term “Mortgaged Property” is
98 synonymous with the term “Secured Property,” and the term “lien” is synonymous with the term
99 “security interest and title.”]

100
101 TO SECURE TO LENDER the repayment of the Indebtedness evidenced by the Note
102 from Borrower payable to Lender dated as of the date of this Security Instrument, and maturing
103 on __ __, 20__ __, in the principal amount of __ __ (\$__ __) (the “**Loan**”),
104 and all renewals, extensions and modifications of the Indebtedness, and the performance of the
105 covenants and agreements of Borrower contained in this Security Instrument and the Note.

106
107 Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged
108 Property and has the right, power and authority to mortgage, grant, convey and assign the
109 Mortgaged Property, and that the Mortgaged Property is unencumbered except for easements and
110 restrictions listed in a schedule of exceptions to coverage in any title insurance policy issued to
111 Lender contemporaneously with the execution and recordation of this Security Instrument and
112 insuring Lender’s interest in the Mortgaged Property. Borrower covenants that Borrower shall
113 warrant and defend generally such title to the Mortgaged Property against all claims and
114 demands, subject to said easements and restrictions.

115
116 **Covenants.** Borrower and Lender covenant and agree as follows:

117
118 **1. DEFINITIONS.** The definition of any capitalized term or word used herein can
119 be found in this Security Instrument, and if not found in this Security Instrument, then found in
120 the Borrower’s Regulatory Agreement and/or in the Note. The following terms, when used in
121 this Security Instrument (including when used in the above recitals), shall have the following
122 meanings:

123
124 “**Accounts Receivable**” means all right, title and interest of Operator in and to the following, in
125 each case arising from the operation of the Healthcare Facility located on the Mortgaged
126 Property in the ordinary course of business: (a) all rights to payment of a monetary obligation,
127 whether or not earned by performance, including, but not limited to, accounts receivable, health-
128 care insurance receivables, Medicaid and Medicare receivables, Veterans Administration
129 receivables, or other governmental receivables, private patient receivables, and HMO
130 receivables, (b) payment intangibles, (c) guaranties, letter-of-credit rights and other supporting
131 obligations relating to the property described in clauses (a) and (b); and (d) all of the proceeds of
132 the property described in clauses (a), (b) and (c). Notwithstanding the foregoing, “Accounts
133 Receivable” shall not include accounts arising from the sale of Operator’s equipment, inventory

134 or other goods, other than accounts arising from the sale of Operator’s inventory in the ordinary
135 course of Operator’s business.

136
137 “**Affiliate**” means any person or business concern that directly or indirectly controls policy of a
138 principal or has the power to do so is an affiliate. Persons and business concerns controlled by
139 the same third party are also affiliates.

140
141 “**Ancillary Agreement**” means any separate agreement between Borrower and Lender for the
142 purpose of establishing escrows or replacement reserves for the Mortgaged Property, establishing
143 an account to assure the completion of repairs or improvements specified in such agreement, or
144 any other agreement or agreements between Borrower and Lender which provide for the
145 establishment of any other fund, reserve or account including but not limited to those reserves
146 and escrows required by HUD in connection with construction activity, if any, and those reserves
147 and escrows required by HUD in connection with the Project. Such agreements may include, but
148 are not limited to, any sinking fund agreement, which provides for a depreciation reimbursement
149 account to pay future principal payments under the Note, where Medicaid or third-party
150 reimbursement is on a depreciation plus interest basis; any depreciation reserve fund agreement
151 which provides for an escrow or trust account with an approved custodian or trustee established
152 for replacing equipment and for funding of depreciation in accordance with a schedule approved
153 by HUD.

154
155 “**Approved Use**” means the use of the Project for the operation of the Healthcare Facility as a
156 ___ [insert type of facility] [with ___ [beds/units] [of which not less than
157 ___ [beds/units] are [to be] in use] and such other uses as may be approved in writing
158 from time to time by HUD based upon a request made by Borrower [, Master Tenant] or
159 Operator, but excluding any uses that are discontinued with the written approval of HUD.

160
161 “**Assisted Living Facility**” means a public facility, proprietary facility, or facility of a private
162 nonprofit corporation or association that (1) is licensed and regulated by the State (or if there is
163 no state law providing for such licensing and regulation by the State, by the municipality or other
164 political subdivision) in which the facility is located; (2) makes available to residents supportive
165 services to assist the residents in carrying out activities of daily living, and may make available
166 to residents home healthcare services, such as nursing and therapy; and (3) provides separate
167 dwelling units for residents, each of which may contain a full kitchen and bathroom, and which
168 includes common rooms and other facilities appropriate for the provision of supportive service to
169 the residents of the facility.

170
171 “**Board and Care Home**” means any residential facility providing room, board, and continuous
172 protective oversight that is regulated by a State pursuant to the provisions of Section 1616(e) of
173 the Social Security Act.

174
175 “**Borrower**” means all persons or entities identified as Borrower in the first paragraph of this
176 Security Instrument, together with any successors, heirs, and assigns (jointly and severally).

177 Borrower shall include any person or entity taking title to the Mortgaged Property whether or not
178 such person or entity assumes the Note. Whenever the term “Borrower” is used herein, the same
179 shall be deemed to include the obligor of the debt secured by this Security Instrument, and so
180 long as the Note is insured or held by HUD, shall also be deemed to be the mortgagor as defined
181 by Program Obligations.

182
183 **“Borrower-Operator Agreement”** means any agreement relating to the management and
184 operation of the Healthcare Facility by and between Borrower [*or Master Tenant*] and Operator,
185 including any Operator Lease.

186
187 **“Borrower’s Regulatory Agreement”** means that certain Healthcare Regulatory Agreement –
188 Borrower relating to the Project, and made by Borrower for the benefit of HUD.

189
190 **“Building Loan Agreement”** means the HUD-approved form of the agreement between
191 Borrower and Lender setting forth the terms and conditions for a HUD-insured construction loan.

192
193 **“Business Day”** means any day other than a Saturday, a Sunday, a federal holiday or other day
194 on which the federal government by law or executive order is closed, or a day on which banking
195 institutions in the State are authorized or obligated by law or executive order to remain closed.

196
197 **“Contract of Insurance”** is defined in 24 C.F.R. Part 232.800(a).

198
199 **“Covenant Event of Default”** is defined in Section 22.

200
201 **“Event of Default”** means a Monetary Event of Default or a Covenant Event of Default, as each is defined in
202 Section 22 and according to the provision of Section 22.

203
204 **“Fixtures”** means all property or goods that become so related or attached to the Land or the
205 Improvements that an interest arises in them under real property law, whether acquired now or in
206 the future, excluding all resident owned goods and property, and including but not limited to:
207 major movable equipment, machinery, equipment (including medical equipment and systems),
208 engines, boilers, incinerators, installed building materials; systems and equipment for the
209 purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light;
210 antennas, cable, wiring and conduits used in connection with radio, television, computers and
211 computer software, medical systems, security, fire prevention, or fire detection or otherwise used
212 to carry electronic signals; telephone systems and equipment; elevators and related machinery
213 and equipment; fire detection, prevention and extinguishing systems and apparatus; security and
214 access control systems and apparatus; plumbing systems; water heaters, ranges, stoves,
215 microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other
216 appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds,
217 shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings;
218 fences, trees and plants; swimming pools; playground and exercise equipment and classroom
219 furnishings and equipment.

220
221 “**Governmental Authority**” means any board, commission, department or body of any
222 municipal, county, state, tribal or federal governmental unit, including any United States
223 territorial government, and any public or quasi-public authority, or any subdivision of any of
224 them, that has or acquires jurisdiction over the Mortgaged Property, including the use, operation
225 or improvement of the Mortgaged Property.

226
227 “**Healthcare Facility**” means that portion of the Project operated on the Land as a Nursing
228 Home, Intermediate Care Facility, Board and Care Home, Assisted Living Facility and/or any
229 other healthcare facility authorized to receive insured mortgage financing pursuant to Section
230 232 of the National Housing Act, as amended, including any commercial space included in the
231 facility.

232
233 “**Healthcare Facility Working Capital**” means current assets of the Healthcare Facility minus
234 current liabilities of the Healthcare Facility, pursuant to Generally Accepted Accounting
235 Principles, as Program Obligations may further clarify or define.

236
237 “**HUD**” means the U.S. Department of Housing and Urban Development acting by and through
238 the Secretary in the capacity as insurer or holder of the Loan under the authority of the National
239 Housing Act, as amended, the Department of Housing and Urban Development Act, as amended,
240 or any other federal law or regulation pertaining to the Loan or the Project.

241
242 “**Impositions**” is defined in Section 8.

243
244 “**Imposition Deposits**” is defined in Section 8.

245
246 “**Improvements**” means the buildings, structures, and alterations now constructed or at any time
247 in the future constructed or placed upon the Land, including any future replacements and
248 additions.

249
250 “**Indebtedness**” means the principal of, interest on, and all other amounts due at any time under
251 the Note or the Loan Documents, including prepayment premiums, late charges, default interest,
252 and advances to protect the security as provided in the Loan Documents.

253
254 “**Land**” means the estate in realty described in Exhibit A.

255
256 “**Leases**” means any and all Operator Leases, Master Leases, Residential Agreements, and any
257 other present and future leases, subleases, licenses, concessions or grants or other possessory
258 interests now or hereafter in force, whether oral or written, covering or affecting the Project, or
259 any portion of the Project, and all modifications, extensions or renewals. Any ground lease to
260 the Borrower creating a leasehold interest in the Land that is security for the Loan is not included
261 in this definition.

262

263 “**Lender**” means the entity identified as “Lender” in the first paragraph of this Security
264 Instrument, or any subsequent holder of the Note, and whenever the term “Lender” is used
265 herein, the same shall be deemed to include the obligee, or the Trustee(s) and the beneficiary of
266 this Security Instrument, and so long as the Loan is insured or held by HUD, shall also be
267 deemed to be the mortgagee as defined by Program Obligations.

268
269 “**Lien**” is defined in Section 17.

270
271 “**Loan**” is defined in the opening paragraphs of this Security Instrument.

272
273 “**Loan Application**” is defined in Section 41.

274
275 “**Loan Documents**” means this Security Instrument, the Note, the Borrower’s Regulatory
276 Agreement [, *the Master Tenant’s Regulatory Agreement, the Operator’s Regulatory*
277 *Agreement,*] and all other agreements, instruments, and documents which are now existing or are
278 in the future required by, delivered to, and/or assigned to Lender and/or HUD in connection with
279 or related to the Loan, whether executed or delivered by or on behalf of Borrower or Operator
280 [or *Master Tenant*], as such documents may be amended from time to time, provided that the
281 Borrower-Operator Agreement [*and the Master Lease*], and any amendments thereto shall not be
282 considered Loan Documents.

283
284 [“**Master Lease**” means that certain [*Name of Master Lease*], in which the Healthcare Facility is
285 aggregated with other HUD-insured healthcare facilities and leased to the Master Tenant.]

286
287 [“**Master Tenant**” means __ __, a __ __ organized and existing under the laws of
288 __ __, the master tenant pursuant to the Master Lease.]

289
290 [“**Master Tenant’s Regulatory Agreement**” means that certain Healthcare Regulatory
291 Agreement – Master Tenant, relating to the Project and entered into by Master Tenant for the
292 benefit of HUD.]

293
294 “**Monetary Event of Default**” is defined in Section 22.

295
296 “**Mortgaged Property**” means all of Borrower’s present and future right, title and interest in and
297 to all of the following, whether now owned or held or later acquired:

- 298 (1) the Land;
- 299 (2) the Healthcare Facility;
- 300 (3) the Improvements;
- 301 (4) the Fixtures;

- 302 (5) the Personalty;
- 303 (6) all current and future rights, including air rights, development rights, zoning rights
304 and other similar rights or interests, easements, tenements, rights-of-way, strips and
305 gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and
306 appurtenances related to or benefiting the Land or the Improvements, or both, and
307 all rights-of-way, streets, alleys and roads which may have been or may in the
308 future be vacated;
- 309 (7) all insurance policies covering any of the Mortgaged Property, and all proceeds paid
310 or to be paid by any insurer of the Land, the Improvements, the Fixtures, the
311 Personalty or any other part of the Mortgaged Property, whether or not Borrower
312 obtained the insurance pursuant to Lender's requirement;
- 313 (8) all awards, payments and other compensation made or to be made by any
314 Governmental Authority with respect to the Land, the Improvements, the Fixtures,
315 the Personalty or any other part of the Mortgaged Property, including any awards or
316 settlements resulting from condemnation proceedings or the total or partial taking of
317 the Land, the Improvements, the Fixtures, the Personalty or any other part of the
318 Mortgaged Property under the power of eminent domain or otherwise and including
319 any conveyance in lieu thereof;
- 320 (9) all contracts, options and other agreements for the sale of the Land, the
321 Improvements, the Fixtures, the Personalty or any other part of the Mortgaged
322 Property entered into by Borrower now or in the future, including cash or securities
323 deposited to secure performance by parties of their obligations;
- 324 (10) all proceeds (cash or non-cash), liquidated claims or other consideration from the
325 conversion, voluntary or involuntary, of any of the Mortgaged Property and the
326 right to collect such proceeds, liquidated claims or other consideration;
- 327 (11) all revenue generated by any portion of the Mortgaged Property and any Leases;
- 328 (12) all earnings, royalties, instruments, accounts (including any deposit accounts),
329 Accounts Receivable, supporting obligations, issues and profits from the Land, the
330 Improvements, the Healthcare Facility, or any other part of the Mortgaged Property,
331 and all undisbursed proceeds of the Loan;
- 332 (13) all Imposition Deposits;
- 333 (14) all refunds or rebates of Impositions by any Governmental Authority or insurance
334 company (other than refunds applicable to periods before the real property tax year
335 in which this Security Instrument is dated);

- 336 (15) any security deposits under any Lease;
- 337 (16) all names under or by which any of the above Mortgaged Property may be operated
338 or known, and all trademarks, trade names, and goodwill relating to any of the
339 Mortgaged Property;
- 340 (17) all deposits and/or escrows held by or on behalf of Lender under Ancillary
341 Agreements;
- 342 (18) all awards, payments, settlements or other compensation resulting from litigation
343 involving the Project;
- 344 (19) any and all licenses, [bed authority, and/or certificates of need; *delete when*
345 *jurisdiction does not permit such a lien*] required to operate the Healthcare Facility
346 and receive the benefits and reimbursements under a provider agreement with
347 Medicaid, Medicare, any State or local programs, healthcare insurers or other
348 assistance providers relied upon by HUD to insure this Security Instrument, to the
349 extent allowed by law, and regardless of whether such rights and contracts are held
350 by Borrower or an operator; and
- 351 (20) all receipts, revenues, income and other moneys received by or on behalf of the
352 Healthcare Facility, including all Accounts Receivable, all contributions, donations,
353 gifts, grants, bequests, all revenues derived from the operation of the Healthcare
354 Facility and all rights to receive the same, whether in the form of Accounts
355 Receivable, contract rights, chattel paper, instruments or other rights whether now
356 owned or held or later acquired by or in connection with the operation of the
357 Healthcare Facility.
- 358
- 359 **“Non-Profit Borrower”** means a Borrower that is treated under the firm commitment as a
360 corporation or association organized for purposes other than profit or gain for itself or persons
361 identified therewith, pursuant to Section 501(c)(3) or other applicable provisions of the Internal
362 Revenue Code.
- 363
- 364 **“Note”** means the Note executed by Borrower evidencing the Loan described in this Security
365 Instrument, including all schedules, riders, allonges and addenda, as such Note may be amended
366 from time to time.
- 367
- 368 **“Notice”** means all notices, demands and other communications under or concerning any of the
369 Loan Documents.
- 370
- 371 **“Nursing Home”** means a public facility, proprietary facility, or facility of a private nonprofit
372 corporation or association, licensed or regulated by the State (or, if there is no State law
373 providing for such licensing and regulation by the State, by the municipality or other political

374 subdivision in which the facility is located), for the accommodation of convalescents or other
375 persons who are not acutely ill and not in need of hospital care but who require skilled nursing
376 care and related medical services, in which such nursing care and medical services are prescribed
377 by, or are performed under the general direction of, persons licensed to provide such care or
378 services in accordance with the laws of the State where the facility is located.

379
380 **“Operator”** means, except as otherwise approved by HUD, (i) any single asset entity acceptable
381 to HUD that operates the Healthcare Facility, pursuant to a lease, management agreement,
382 operating agreement, or similar contract with the Borrower, or if the Healthcare Facility is
383 aggregated with other health care facilities in connection with a master lease, with the Master
384 Tenant, or (ii) the Borrower in those circumstances in which the Borrower is directly operating
385 the Healthcare Facility. Where the Project has more than one licensed operator, the use of the
386 singular shall include the plural.

387
388 **“Operator Lease”** means a lease by [Borrower *OR* Master Tenant] to Operator providing for the
389 operation of the Healthcare Facility.

390
391 **“Operator’s Regulatory Agreement”** means that certain Healthcare Regulatory Agreement –
392 Operator, relating to the Project and entered into by Operator for the benefit of HUD.

393
394 **“Operator’s Security Agreement”** means that certain Operator Security Agreement relating to
395 the Project, and made by Operator.

396
397 **“Personalty”** means all equipment, inventory, and general intangibles associated with the
398 Healthcare Facility and/or the Project. It includes furniture, furnishings, beds, machinery,
399 building materials, appliances, goods, supplies, tools, books, records (whether in written or
400 electronic form), computer equipment (hardware and software) and other tangible or
401 electronically stored personal property (other than Fixtures) that are owned, leased or used now
402 or in the future in connection with the ownership, management or operation of the Healthcare
403 Facility and/or any other portion of the Project, or are located on the Land or in the
404 Improvements, and any operating agreements relating to the Project, and any surveys, plans and
405 specifications and contracts for architectural, engineering and construction services relating to
406 the Project, and all other intangible property and rights relating to the operation of, or used in
407 connection with, the Project, including all certifications, approvals and governmental permits
408 relating to any activities on the Land. Personalty includes all tangible and intangible personal
409 property used in connection with the Healthcare Facility (such as major movable equipment and
410 systems), accounts, licenses, bed authorities, certificates of need required to operate the
411 Healthcare Facility and to receive benefits and reimbursements under provider agreements with
412 Medicaid, Medicare, State and local programs, payments from healthcare insurers and any other
413 assistance providers; all certifications, permits and approvals, instruments, Rents, lease and
414 contract rights, and equipment leases relating to the use, operation, maintenance, repair and
415 improvement of the Healthcare Facility. Generally, intangibles shall also include all cash and
416 cash escrow funds, such as but not limited to: reserve for replacement accounts, debt service

417 reserve accounts, bank accounts, Residual Receipts accounts, and investments.

418

419 **“Principal”** is defined in the 232 Handbook, Section II, Chapter 6.

420

421 **“Program Obligations”** means (1) all applicable statutes and any regulations issued by HUD
422 pursuant thereto that apply to the Project, including all amendments to such statutes and
423 regulations, as they become effective, except that changes subject to notice and comment
424 rulemaking shall become effective only upon completion of the rulemaking process, and (2) all
425 current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to
426 the Project, and all future updates, changes and amendments thereto, as they become effective,
427 except that changes subject to notice and comment rulemaking shall become effective only upon
428 completion of the rulemaking process, and provided that such future updates, changes and
429 amendments shall be applicable to the Project only to the extent that they interpret, clarify and
430 implement terms in this Security Instrument rather than add or delete provisions from such
431 document. Handbooks, guides, notices, and mortgagee letters are available on HUD’s official
432 website: <http://www.hud.gov/offices/adm/hudclips/index.cfm>, or a successor location to that
433 site.

434

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

438

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

440

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

445

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

452

453 **“Residential Agreement”** means any lease or other agreement between the Operator and a
454 resident setting forth the terms of the resident’s living arrangements and the provision of any
455 related services.

456

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

459

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

463
464 “**Surplus Cash**” means any Borrower’s cash remaining in Project-related accounts at the close
465 of business on the last day of the Project’s semi-annual fiscal period, as further described in
466 Program Obligations.

467
468 “**Taxes**” means all taxes, assessments, vault rentals and other charges, if any, general, special or
469 otherwise, including all assessments for schools, public betterments and general or local
470 improvements, which are levied, assessed or imposed by any public authority or quasi-public
471 authority, and which, if not paid, could become a lien on the Land or the Improvements.

472
473 “**Waste**” means a failure to keep the Project in decent, safe and sanitary condition and in good
474 repair. Waste also means the failure to meet certain financial obligations regarding the payment
475 of Taxes and the relinquishment of the possession of Rents. During any period in which HUD
476 insures the Loan or holds a security interest on the Mortgaged Property, Waste is committed
477 when, without Lender’s and HUD’s express written consent, Borrower:

- 478 (1) physically changes, or permits changes to, the Mortgaged Property,
479 whether negligently or intentionally, in a manner that reduces its value;
- 480 (2) fails to maintain the Mortgaged Property in decent, safe, and sanitary
481 condition and in good repair;
- 482 (3) fails to pay, or cause to be paid, before delinquency any Taxes secured by
483 a lien having priority over this Security Instrument;
- 484 (4) materially fails to comply with covenants in the Note, this Security
485 Instrument, Borrower’s Regulatory Agreement, or any Loan Document,
486 respecting physical care, maintenance, construction, abandonment,
487 demolition, or insurance against casualty of the Mortgaged Property; or
- 488 (5) retains possession of Rents to which Lender or its assigns have the right of
489 possession under the terms of the Loan Documents.

490
491 “**UCC Collateral**” means any Mortgaged Property which, under applicable law, may be subject
492 to a security interest under the UCC, whether acquired now or in the future, and all products and
493 cash proceeds and non-cash proceeds thereof.

494
495 **2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

- 496
497 (a) This Security Instrument is also a security agreement under the Uniform

498 Commercial Code (“UCC”) for any of the Mortgaged Property which is UCC Collateral, and
499 Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby
500 authorizes Lender to file financing statements, continuation statements and amendments,
501 including any deposit account control agreements or similar agreements, in such form as Lender
502 may require to perfect or continue the perfection of this security interest. Borrower agrees to
503 enter into any agreements, in form as Lender may require that the UCC requires to perfect and
504 continue perfection of Lender’s security interest in the portion of UCC Collateral that requires
505 Lender control to attain such perfection. Borrower shall pay all filing costs and all costs and
506 expenses of any record searches for financing statements that Lender may require. Without the
507 prior written consent of Lender and HUD, Borrower shall not create or permit to exist any other
508 lien or security interest in any of the UCC Collateral. Borrower represents and warrants to
509 Lender that, except for UCC filings disclosed to Lender and HUD that are to be released in
510 connection with the closing of the Loan or otherwise consented to in writing by Lender and
511 HUD, no UCC filings have been made against Borrower, the UCC Collateral, the Mortgaged
512 Property, or the Project prior to the initial or initial/final endorsement of the Note by HUD, and
513 Borrower has taken and shall take no action that would give rise to such UCC filings, except for
514 any UCC filings in connection with the acquisition of any Personalty that has been approved in
515 writing by HUD. Borrower also represents and warrants to Lender that, except in connection
516 with any Accounts Receivable financing as approved by Lender and HUD or as otherwise
517 permitted by Lender and HUD, Borrower has not entered into, and will not enter into, nor has it
518 permitted nor will it permit, Operator or Master Tenant or any management agent, as applicable,
519 to enter into any agreement with any party other than Lender in conjunction with the present
520 Loan transaction that allows for the perfection of a security interest in any portion of the UCC
521 Collateral. Borrower will promptly notify Lender of any change in its business or principal
522 location, name, or other organizational change that would require a filing under the UCC to
523 continue perfection of Lender’s interest, and hereby authorizes Lender to file, and will assist
524 Lender in filing, any forms necessary to continue the effectiveness of existing financing
525 statements or for perfection of Lender’s security interest. If an Event of Default has occurred
526 and is continuing, Lender shall have the remedies of a secured party under the UCC, in addition
527 to all remedies provided by this Security Instrument or existing under applicable law. In
528 exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately
529 or together, and in any order, without in any way affecting the availability of Lender’s other
530 remedies. This Security Instrument constitutes a fixture filing financing statement with respect
531 to any part of the Mortgaged Property which is or may become a Fixture and which shall be filed
532 in the local real estate records.

533
534 (b) In addition, to the extent the UCC Collateral may exclude any of the Mortgaged
535 Property, Borrower hereby grants to Lender a security interest in any and all of the present or
536 hereafter acquired Mortgaged Property, and all products, cash proceeds and non-cash proceeds
537 thereof.

538
539 (c) The Borrower acknowledges and agrees that, in applying the law of any
540 jurisdiction that at any time enacts all or substantially all of the uniform provisions of Revised

541 Article 9 of the UCC (1999 Official Text, as amended), the definition of Mortgaged Property and
542 the above collateral description covers all assets of Borrower.
543

544 **3. CONTROL OF DEPOSIT ACCOUNTS.** As part of the consideration for the
545 Indebtedness, Borrower has executed, or has caused Operator [or Master Tenant] to execute, one
546 or more deposit account control agreements or similar agreements in a form approved by Lender
547 and HUD, pursuant to which Borrower, [Master Tenant,] or Operator, as applicable,
548 acknowledges Lender as a secured party, and grants to Lender control (as defined in Section 9-
549 104 of the UCC) of one or more deposit accounts of the Project and all cash, moneys and other
550 property on deposit from time to time therein. Lender shall exercise such control in accordance
551 with such deposit account control agreements or similar agreements, and Borrower shall
552 continue to execute or cause to be executed such deposit account control agreements or similar
553 agreements with respect to the Project's accounts as required by Lender and HUD.
554

555 **4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED**
556 **PROPERTY.**
557

558 (a) As part of the consideration for the Indebtedness, Borrower absolutely and
559 unconditionally assigns and transfers to Lender all of Borrower's rights, title and interest in, to
560 and under the Leases, including Borrower's right, power and authority to modify the terms of
561 any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to
562 establish a present, absolute and irrevocable transfer and assignment to Lender of all of
563 Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this
564 assignment of the Leases to be immediately effective and to constitute an absolute present
565 assignment and not an assignment for additional security only. For purposes of giving effect to
566 this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed
567 to be a part of the Mortgaged Property. However, if this present, absolute and unconditional
568 assignment of Leases is not enforceable by its terms under the laws of the Property Jurisdiction,
569 then the Leases shall be included as a part of the Mortgaged Property and it is the intention of
570 Borrower that in this circumstance this Security Instrument create and perfect a lien on the
571 Leases in favor of Lender, which lien shall be effective as of the date of this Security Instrument.
572

573 (b) Until Lender gives Notice to Borrower of Lender's exercise of its rights under this
574 Section 4, Borrower shall have all rights, power and authority granted to Borrower under any
575 Lease (except as otherwise limited by this Section or any other provision of this Security
576 Instrument), including the right, power and authority to modify the terms of any Lease or extend
577 or terminate any Lease as such rights are limited or affected by the terms of the Loan Documents
578 and Program Obligations. Upon the occurrence of an Event of Default and throughout its
579 continuation, the permission given to Borrower pursuant to the preceding sentence to exercise its
580 rights, power and authority under Leases shall automatically terminate. Should such Event of
581 Default be subsequently cured, the Borrower's aforesaid permission shall be reinstated.
582 Borrower shall comply with and observe Borrower's obligations under all Leases, including
583 Borrower's obligations, if any, pertaining to the maintenance and disposition of security

584 deposits.

585

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

604

605 (d) Upon delivery of Notice by Lender to Borrower of Lender's exercise of Lender's
606 rights under this Section 4 at any time after the occurrence of an Event of Default, and without
607 the necessity of Lender entering upon and taking and maintaining control of the Mortgaged
608 Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of
609 the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted
610 to Borrower under any Lease, including the right, power and authority to modify the terms of any
611 such Lease, or extend or terminate any such Lease.

612

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

616

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

624

625 **6. EXCULPATION.** Except for personal liability expressly provided for in this
626 Security Instrument or in the Note or in the Borrower's Regulatory Agreement, the execution of

627 the Note shall impose no personal liability upon Borrower, or those individuals/entities listed in
628 Section 38 of the Borrower's Regulatory Agreement, for payment of the Indebtedness evidenced
629 thereby and in the Event of Default, the holder of the Note shall look solely to the Mortgaged
630 Property in satisfaction of the Indebtedness and will not seek or obtain any deficiency or
631 personal judgment against Borrower, or those individuals/entities listed in Section 38 of the
632 Borrower's Regulatory Agreement], except such judgment or decree as may be necessary to
633 foreclose or bar its interest in the Mortgaged Property and all other property mortgaged, pledged,
634 conveyed or assigned to secure payment of the Indebtedness; provided, that nothing in this
635 Section 6 of this Security Instrument and no action so taken shall operate to impair any
636 obligation under the Borrower's Regulatory Agreement or those parties listed in the Section 38
637 of the Borrower's Regulatory Agreement.

638
639 **7. DEPOSITS FOR TAXES, INSURANCE AND OTHER CHARGES.**
640

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

- 646
647 (1) an amount sufficient to provide Lender with funds to pay the next
648 mortgage insurance premium if this Security Instrument and the Note are
649 insured by HUD, or a monthly service charge, if they are held by HUD, as
650 follows:
651
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
657 (ii) If and so long as the Note and this Security Instrument are held by
658 HUD, a monthly service charge in an amount equal to the lesser of
659 the amount permitted by law or the amount set forth in Program
660 Obligations computed for each successive year beginning with the
661 first day of the month following the date of this Security
662 Instrument, or the first day of the month following assignment, if
663 the Note and this Security Instrument are assigned to HUD without
taking into account delinquencies or prepayment; and
664
665 (2) a sum equal to the ground rents, if any, next due, plus the premiums that
666 will next become due and payable on policies of fire and other property
667 insurance covering the premises covered hereby, plus water rates, Taxes,
municipal/government utility charges and special assessments next due on

668 the premises covered hereby (all as estimated by Lender) less all sums
669 already paid therefore divided by the number of months to the date when
670 such ground rents, premiums, water rates, Taxes, municipal/utility charges
671 and special assessments will become delinquent, such sums to be held by
672 Lender in trust to pay said ground rents, premiums, water rates, Taxes, and
673 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) ground rents, if Lender has required them to be escrowed with
682 Lender, Taxes, special assessments, water rates,
683 municipal/government utility charges, fire and other property
684 insurance premiums;

685 (iii) interest on the Note; and

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

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

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

696

697 **8. IMPOSITION DEPOSITS.**

698

699 (a) In the event Borrower or Operator fails to pay any sums provided for in this
700 Security Instrument, Lender, at its option, may pay the same. Any excess funds accumulated
701 under Section 7(a) remaining after payment of the items therein mentioned, shall be credited to
702 subsequent monthly payments of the same nature required thereunder; but if any such item shall
703 exceed the estimate therefore, or if Borrower or Operator shall fail to pay any other
704 governmental or municipal charge, Borrower shall forthwith, or shall cause Operator to
705 forthwith, make good the deficiency or pay the charge before the same become delinquent or

706 subject to interest or penalties and in default thereof Lender may pay the same. All sums paid or
707 advanced by Lender and any sums which Lender may be required to advance to pay mortgage
708 insurance premiums shall be added to the Indebtedness and shall bear interest from the date of
709 payment at the rate specified in the Note and shall be due and payable on demand. In case of
710 termination of the Contract of Insurance by prepayment of the Indebtedness in full or otherwise
711 (except as hereinafter provided), accumulations under Section 7(a) not required to pay sums due
712 under Section 7(a)(3) shall be credited to Borrower. If the Mortgaged Property is sold under
713 foreclosure or is otherwise acquired by Lender after an Event of Default, any remaining balance
714 of the accumulations under Section 7(a) shall be credited to the principal under the Note as of the
715 date of the commencement of foreclosure proceedings or as of the date the Mortgaged Property
716 is otherwise acquired; and accumulations under Section 7 shall be likewise credited unless
717 required to pay sums due HUD under Section 7(a)(3). The amounts deposited under Section 7
718 and Section 8 are collectively referred to in this Security Instrument as the “**Imposition**
719 **Deposits**”. The obligations of Borrower for which the Imposition Deposits are required are
720 collectively referred to in this Security Instrument as “**Impositions**”. The amount of the
721 Imposition Deposits shall be sufficient to enable Lender to pay applicable Impositions before the
722 last date upon which such payment may be made without any penalty or interest charge being
723 added. Lender shall maintain records indicating how much of the monthly Imposition Deposits
724 and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of
725 paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition
726 Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition
727 Deposits to Lender may be revoked by Lender, in Lender’s discretion, at any time upon Notice to
728 Borrower.

729
730 (b) Imposition Deposits shall be held in accounts insured or guaranteed by a federal
731 agency and in accordance with Program Obligations. Lender shall apply the Imposition Deposits
732 to pay Impositions so long as no Event of Default has occurred and is continuing. Unless
733 required by Program Obligations, Lender shall not be required to pay Borrower any interest,
734 earnings or profits on the Imposition Deposits with the exception of the reserve for replacements
735 account or Residual Receipts account (if any). Borrower hereby pledges and grants to Lender a
736 security interest in the Imposition Deposits as additional security for all of Borrower’s
737 obligations under this Security Instrument and the Note. Any amounts deposited with Lender
738 under Section 7 shall not be trust funds, nor shall they operate to reduce the Indebtedness.

739
740 (c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the
741 Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay
742 any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may
743 pay an Imposition according to any bill, statement or estimate from the appropriate public office
744 or insurance company without inquiring into the accuracy of the bill, statement or estimate or
745 into the validity of the Imposition.

746
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

756 **9. REGULATORY AGREEMENT.**

757

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

768

769 (b) Borrower shall require Operator to comply with the terms of the Operator's
770 Regulatory Agreement and shall set forth such requirements, or cause such requirements to be
771 set forth, in any Borrower-Operator Agreement. If the Mortgage Property is included in a
772 Master Lease, Borrower shall require Master Tenant to comply with the terms of the Master
773 Tenant's Regulatory Agreement and shall set forth such requirements in any Master Lease.

774

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

784

785 **11. COMPLIANCE WITH LAWS.** Borrower shall comply with all applicable:
786 laws; ordinances; regulations; requirements of any Governmental Authority; lawful covenants
787 and agreements recorded against the Mortgaged Property; so long as the Loan is insured or held
788 by HUD, the Borrower's Regulatory Agreement, and Program Obligations including lead-based
789 paint maintenance requirements of 24 C.F.R. Part 35, subpart G, and any successor regulations;
790 including but not limited to those of the foregoing pertaining to: health and safety; construction
791 of Improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use;

792 Leases; and maintenance and disposition of security deposits; and, with respect to all of the
793 foregoing, all subsequent amendments, revisions, promulgations or enactments. Borrower shall
794 at all times maintain records sufficient to demonstrate compliance with the provisions of this
795 Section 11. Borrower shall take appropriate measures to prevent, and shall not engage in or
796 knowingly permit, any illegal activities at the Mortgaged Property, including those that could
797 endanger residents or visitors, result in damage to the Mortgaged Property, result in forfeiture of
798 the Mortgaged Property, or otherwise impair the lien created by this Security Instrument or
799 Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no
800 portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal
801 activity.
802

803 **12. USE OF PROPERTY.** Unless permitted by applicable law and approved by
804 Lender, Borrower shall not (a) allow changes in the use for which all or any part of the
805 Mortgaged Property is being used at the time this Security Instrument was executed, (b) convert
806 any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a
807 change in the zoning classification of the Mortgaged Property that results in any change in
808 permitted use that was in effect at the time of initial/final endorsement, (d) establish any
809 condominium or cooperative regime with respect to the Mortgaged Property, (e) materially
810 change any unit configurations or change the number of units in the Mortgaged Property, (f)
811 combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is
812 not part of the Mortgaged Property, (g) subdivide or otherwise split any tax parcel constituting
813 all or any part of the Mortgaged Property, or (h) so long as the Note is insured or held by HUD,
814 permit the Mortgaged Property to be used as transient housing or as a hotel in violation of
815 Section 513 of the National Housing Act, as amended.
816

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

818
819 (a) If Borrower fails to perform any of its obligations under this Security Instrument,
820 Note or Borrower's Regulatory Agreement, or if any action or proceeding is commenced which
821 purports to affect the Mortgaged Property, Lender's security or Lender's rights under this
822 Security Instrument, including eminent domain, insolvency, Waste, code enforcement, civil or
823 criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or
824 reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option
825 may make such appearances, advance such sums and take such actions as Lender reasonably
826 deems necessary to perform such obligations of Borrower and to protect Lender's interest,
827 including (1) payment of fees and out-of-pocket expenses of attorneys (including fees for
828 litigation at all levels), accountants, inspectors and consultants, (2) entry upon the Mortgaged
829 Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance
830 required by Section 19, and (4) payment of amounts which Borrower has failed to pay under
831 Section 16 or any other Section of this Security Instrument.
832

833 (b) Any amounts advanced by Lender for taxes, special assessments, water rates,
834 which are liens prior to this Security Instrument, insuring the Project and mortgage insurance

835 premiums, paid after an Event of Default, shall be added to, and become part of the
836 Indebtedness, and shall be immediately due and payable and shall bear interest from the date of
837 the advance until paid at the interest rate specified in the Note. So long as the Loan is insured or
838 held by HUD, Lender does not have any obligation to make advances except as required under
839 Program Obligations, and any advance by Lender other than as required by Program Obligations
840 requires prior HUD approval before such advance can be added to the Indebtedness.

841
842 (c) Nothing in Section 13 shall require Lender to incur any expense or take any action
843 to protect its security.

844
845 **14. INSPECTION.** Upon reasonable notice, Lender and/or HUD, and/or the agents,
846 representatives, and designees of either, may make or cause to be made entries upon and
847 inspections of the Mortgaged Property (including any environmental inspections and tests)
848 during normal business hours, or at any other reasonable time.

849
850 **15. BOOKS AND RECORDS; FINANCIAL REPORTING.** Borrower shall
851 comply with the books, records, and reporting requirements of the Borrower's Regulatory
852 Agreement.

853
854 **16. TAXES; OPERATING EXPENSES.**

855
856 (a) Subject to the provisions of Section 16(c) and Section 16(d), Borrower shall pay,
857 or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or
858 cost for nonpayment.

859
860 (b) Subject to the provisions of Section 16(c), Borrower shall pay, or cause to be
861 paid, the expenses of operating, managing, maintaining and repairing the Mortgaged Property
862 (including insurance premiums, utilities, repairs and replacements) before the last date upon
863 which each such payment may be made without any penalty or interest charge being added.

864
865 (c) As long as no Event of Default exists and Borrower has timely delivered to
866 Lender any bills or premium notice that it has received, Borrower shall not be obligated to pay
867 Taxes, insurance premiums or any other individual Imposition to the extent that sufficient
868 Imposition Deposits are held by Lender for the purpose of paying that specific Imposition. If an
869 Event of Default exists, Lender may exercise any rights Lender may have with respect to
870 Imposition Deposits without regard to whether Impositions are then due and payable; provided
871 that so long as the Loan is insured by HUD, Lender's exercise of its rights shall be subject to
872 Program Obligations pertaining to claims for mortgage insurance benefits. Lender shall have no
873 liability to Borrower for failing to pay any Impositions to the extent that any Event of Default
874 has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time
875 an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and
876 premium notice as provided above.

877

878 (d) Borrower, at its own expense, and, so long as the Loan is insured or held by HUD,
879 in accordance with the Borrower's Regulatory Agreement, may contest by appropriate legal
880 proceedings, conducted diligently and in good faith, the amount or validity of any Imposition
881 other than insurance premiums, if (1) Borrower notifies Lender of the commencement or
882 expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of
883 being sold or forfeited, (3) Borrower deposits or causes Operator to deposit with Lender reserves
884 sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes
885 whatever additional security is required in the proceedings or is reasonably requested by Lender,
886 which may include the delivery to Lender of the reserves established by Borrower to pay the
887 contested Imposition.

888

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

892

893 **17. LIENS; ENCUMBRANCES.**

894

895 (a) Borrower shall not permit the grant, creation or existence of any mortgage, deed
896 of trust, deed to secure debt, security deed, security interest or other lien or encumbrance
897 ("Lien") on the Mortgaged Property (other than the lien of this Security Instrument, any tax liens
898 which are imposed before payment is due, or any subordinate liens which are approved by HUD
899 and Lender), whether voluntary, involuntary or by operation of law, and whether or not such
900 Lien has priority over the lien of this Security Instrument.

901

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

907

908 **18. PRESERVATION, MANAGEMENT AND MAINTENANCE OF THE**
909 **MORTGAGED PROPERTY.** Borrower (a) shall not commit Waste, (b) shall not abandon the
910 Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner,
911 any damaged part of the Mortgaged Property to the equivalent of its original condition, or such
912 other condition as Lender may approve in writing, whether or not litigation or insurance
913 proceeds or condemnation awards are available to cover any costs of such restoration or repair,
914 (d) shall keep the Mortgaged Property in decent, safe, and sanitary condition and good repair,
915 including the replacement of Personalty and Fixtures with items of equal or better function and
916 quality, all in accordance with Program Obligations, (e) shall provide for qualified management
917 of the Mortgaged Property by a licensed or otherwise qualified entity consistent with Program
918 Obligations and/or any governmental requirements pertaining to operation and licensure, (f) shall
919 give Notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and
920 defend, any action or proceeding that could impair the Mortgaged Property, Lender's security or

921 Lender's rights under this Security Instrument, (g) shall not (and shall not permit any Operator,
922 resident or other person to) remove, demolish or alter the Mortgaged Property or any part of the
923 Mortgaged Property except that Borrower may dispose of obsolete or deteriorated Fixtures or
924 Personalty if the same are replaced with like items of the same or greater quality or value, or
925 make minor alterations which do not impair the Mortgaged Property, and (h) so long as the Loan
926 is insured or held by HUD, shall not expend any Project funds except for Reasonable Operating
927 Expenses and necessary repairs and except as permitted by Program Obligations and the
928 Borrower's Regulatory Agreement, without the prior written approval of HUD. Borrower shall
929 cause any operator, master tenant, management agent, as applicable, to comply with the
930 foregoing provisions (a) through (h). So long as the Loan is insured or held by HUD, all
931 expenses incurred by Borrower in connection with the Mortgaged Property shall be incurred in
932 compliance with Program Obligations.

934 **19. PROPERTY AND LIABILITY INSURANCE.**

935
936 (a) Borrower shall keep the Mortgaged Property insured at all times to the full extent
937 of Program Obligations, as they may be amended from time to time. Further, Borrower shall
938 keep the Mortgaged Property insured at all times against such hazards as Lender may from time
939 to time require, which insurance shall include but not be limited to coverage against loss by fire
940 and allied perils, general boiler and machinery coverage, builders all-risk and business income
941 coverage. Lender's insurance requirements may change from time to time throughout the term
942 of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance,
943 mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not
944 conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the
945 Improvements are located in an area identified by the Federal Emergency Management Agency
946 (or any successor to that agency) as an area having special flood hazards, Borrower shall
947 maintain flood insurance covering the applicable Improvements in an amount at least equal to its
948 development or project cost (less estimated land cost) or to the maximum limit of coverage made
949 available with respect to the particular type of property under the National Flood Insurance Act
950 of 1968, as amended, or its successor statute, whichever is less, provided that the amount of
951 flood insurance need not exceed the outstanding principal balance of the Note, and flood
952 insurance need not be maintained beyond the term of the Note. If Lender determines that flood
953 insurance has not been obtained in the required amount, Lender must notify Borrower of
954 Borrower's obligations to obtain the proper flood insurance. If Borrower does not obtain such
955 insurance within forty-five (45) days of the date of this notification, Lender shall purchase such
956 flood insurance on behalf of Borrower and may charge Borrower for the cost of premiums and
957 fees incurred by Lender in purchasing the flood insurance.

958
959 (b) All premiums on insurance policies required under Section 19(a) shall be paid in
960 the manner provided in Section 7, unless Lender has designated in writing another method of
961 payment. All such policies shall also be in a form approved by Lender. All policies of property
962 damage insurance shall include a non-contributing, non-reporting mortgage clause in a form
963 approved by Lender, and in favor of Lender (and HUD, as their interests appear) and shall name

964 as loss payee Lender, its successors and assigns. Lender shall have the right to hold the original
965 policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall
966 promptly deliver to Lender a copy of all renewal and other notices received by Borrower with
967 respect to the policies and all receipts for paid premiums. At least thirty (30) days prior to the
968 expiration date of a policy, Borrower shall deliver to Lender evidence of continuing coverage in
969 form satisfactory to Lender.

970
971 (c) Borrower shall maintain or shall cause Operator to at all times maintain
972 commercial general and professional liability insurance, workers' compensation insurance and
973 such other liability, errors and omissions and fidelity insurance coverages to the full extent of
974 Program Obligations, as may be amended from time to time. Further, Borrower shall maintain or
975 shall cause Operator to at all times maintain such coverages as Lender may from time to time
976 reasonably require, or shall require any appropriate party to maintain at all times commercial
977 general liability insurance, workers' compensation insurance and such other liability, errors and
978 omissions and fidelity insurance coverages as Lender may from time to time reasonably require
979 or such other insurance coverage as required by Program Obligations.

980
981 (d) All insurance policies and renewals of insurance policies required by this Section
982 19 shall be in such amounts and for such periods as Lender may from time to time require, and
983 shall be issued by insurance companies satisfactory to Lender and in accordance with Program
984 Obligations. Lender shall have the right to effect insurance in the event Borrower fails to
985 comply with this Section.

986
987 (e) Borrower shall comply with all insurance requirements and shall not permit any
988 condition to exist on the Mortgaged Property that would invalidate any part of any insurance
989 coverage that this Security Instrument requires Borrower to maintain.

990
991 (f) In the event of loss, Borrower shall give immediate written Notice to the
992 insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-
993 fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of
994 property damage insurance, to appear in and prosecute any action arising from such property
995 damage insurance policies, to collect and receive the proceeds of property damage insurance, and
996 to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds.
997 This power of attorney is coupled with an interest and therefore is irrevocable. Borrower shall
998 notify Lender of any payment received from any insurer. Lender shall (1) hold the balance of
999 such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the
1000 Mortgaged Property to the equivalent of its original condition or to a condition approved by
1001 Lender, or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or
1002 not then due. To the extent Lender determines to apply insurance proceeds to restoration, Lender
1003 shall do so in accordance with Lender's then-current policies relating to the restoration of
1004 casualty damage on similar healthcare properties; provided that so long as the Loan is insured or
1005 held by HUD, insurance proceeds shall be applied as approved by HUD and in accordance with
1006 Program Obligations pursuant to Section 19(g) below.

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(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the restoration; (3) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; and (4) Lender determines, in its discretion, that the restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty. Further, so long as the Loan is insured by HUD, Lender may not exercise its option to apply insurance proceeds to the payment of the Indebtedness without the prior written approval of HUD. If HUD fails to give its approval to the use or application of such funds within sixty (60) days after the written request by Lender, Lender may use or apply such funds for any of the purposes specified herein without the approval of HUD.

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

20. CONDEMNATION.

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

(b) All awards of compensation in connection with condemnation for public use of or a taking of any of the Mortgaged Property shall be paid to Lender to be applied (1) to fees, costs and expenses (including reasonable attorney's fees) incurred by Lender; and (2) to the amount due under the Note secured hereby in (i) amounts equal to the next maturing installment or

1050 installments of principal and (ii) with any balance to be credited to the next payment due under
1051 the Note. After payment to Lender of all fees, costs and expenses (including reasonable
1052 attorney's fees) incurred by Lender under this Section 20, all awards of damages in connection
1053 with any condemnation for public use of or damage to the Mortgaged Property, shall be paid to
1054 Lender to be applied to an account held for and on behalf of Borrower, which account shall, at
1055 the option of Lender, either be applied to the amount due under the Note as specified in the
1056 preceding sentence, or be disbursed for the restoration. No amount applied to the reduction of
1057 the principal amount due in accordance with this Section 20(b) shall be considered an optional
1058 prepayment as the term is used in this Security Instrument and the Note secured hereby, nor
1059 relieve Borrower from making regular monthly payments commencing on the first day of the
1060 first month following the date of receipt of the award. Lender is hereby authorized in the name
1061 of Borrower to execute and deliver necessary releases or approvals or to appeal from such
1062 awards.

1063
1064 **21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN**
1065 **BORROWER.**
1066

1067 (a) So long as the Loan is insured or held by HUD, unless permitted by Program
1068 Obligations, Borrower shall not convey, assign, transfer, pledge, hypothecate, encumber or
1069 otherwise dispose of the Mortgaged Property or any interest therein or permit the conveyance,
1070 assignment or transfer of any interest in Borrower (if the effect of such conveyance, assignment
1071 or transfer is the creation or elimination of a Principal) unless permitted by Program Obligations.
1072 Borrower need not obtain the prior written approval of HUD for: (i) conveyance of the
1073 Mortgaged Property at a judicial or non-judicial foreclosure sale under this Security Instrument;
1074 (ii) inclusion of Mortgaged Property in a bankruptcy estate by operation of law under the United
1075 States Bankruptcy Code; (iii) acquisition of an interest by inheritance or by court decree, or (iv)
1076 other transfers permitted by Program Obligations.

1077
1078 (b) If the Loan is no longer insured or held by HUD, Borrower shall not convey,
1079 assign, transfer, pledge, hypothecate, encumber or otherwise dispose of the Mortgaged Property
1080 or any interest therein or permit the conveyance, assignment or transfer of any interest in
1081 Borrower without the prior written approval of Lender in its sole discretion.
1082

1083 **22. EVENTS OF DEFAULT.** The occurrence of any one or more of the following
1084 shall constitute either a "**Monetary Event of Default**" or a "**Covenant Event of Default**" under
1085 this Security Instrument:
1086

1087 (a) **Monetary Event of Default:** Any failure by Borrower to pay or deposit when due
1088 any amount required by the Note or Section 7(a) or (b) of this Security Instrument.

1089
1090 (b) **Covenant Events of Default shall include:**

1091
1092 (1) fraud or material misrepresentation or material omission by Borrower, any

- 1093 of its officers, directors, trustees, general partners, members, managers or
1094 any guarantor in connection with (i) the Loan Application for or creation
1095 of the Indebtedness, (ii) any financial statements, or other report or
1096 information provided to Lender or any governmental entity during the
1097 term of the Indebtedness, or (iii) any request for Lender's consent to any
1098 proposed action under this Security Instrument or the Note;
1099
- 1100 (2) the commencement of a forfeiture action or proceeding, whether civil or
1101 criminal, which, in Lender's reasonable judgment, could result in a
1102 forfeiture of the Mortgaged Property or otherwise materially impair the
1103 lien created by this Security Instrument or Lender's interest in the
1104 Mortgaged Property;
1105
- 1106 (3) any material failure by Borrower to perform or comply with any of its
1107 obligations under this Security Instrument (other than those otherwise
1108 specified in this Section 22), as and when required, which continues for a
1109 period of thirty (30) calendar days after Notice of such failure by Lender
1110 to Borrower, Lender shall extend such 30-day period by such time as
1111 Lender reasonably determines is necessary to correct the failure for so
1112 long as Lender determines, in its discretion, that: (i) Borrower is timely
1113 satisfying all payment obligations in the Loan Documents; (ii) none of the
1114 Permits and Approvals is at substantial and imminent risk of being
1115 terminated; (iii) such failure cannot reasonably be corrected during such
1116 30-day period, but can reasonably be corrected in a timely manner, and
1117 (iv) Borrower commences to correct such failure, or cause such correction
1118 to be commenced, during such 30-day period and thereafter diligently and
1119 continuously proceeds to correct, or cause correction of, such failure.
1120 However, no such Notice shall apply in the case of any such material
1121 failure which could, in Lender's judgment, absent immediate exercise by
1122 Lender of a right or remedy under this Security Instrument, result in harm
1123 to Lender or impairment of the Note or this Security Instrument;
1124
- 1125 (4) so long as the Loan is insured or held by HUD, any failure by Borrower to
1126 perform any of its obligations as and when required under the Borrower's
1127 Regulatory Agreement, which failure continues beyond the applicable
1128 cure period, if any, specified in the Borrower's Regulatory Agreement;
1129 however, violations under the terms of the Borrower's Regulatory
1130 Agreement may only be treated as a default under this Security Instrument
1131 if HUD requests Lender to treat them as such; and,
1132
- 1133 (5) so long as the Loan is insured or held by HUD, any Event of Default
1134 pursuant to the Operator's Regulatory Agreement, provided that such
1135 Event of Default pursuant to the Operator's Regulatory Agreement may

1136 only be treated as a default under this Security Instrument if HUD requests
1137 Lender to treat it as such.
1138

1139 (c) Lender shall deliver to the Principal(s) of Borrower, Notice, as provided in
1140 Section 31, within five (5) Business Days in each case where Lender has delivered Notice to
1141 Borrower of an Event of Default, in order to provide the Principal(s) an opportunity to cure
1142 either a Monetary Event of Default or a Covenant Event of Default.
1143

1144 **23. REMEDIES CUMULATIVE.** Each right and remedy provided in this Security
1145 Instrument is distinct from all other rights or remedies under this Security Instrument, the Note,
1146 or so long as the Loan is insured or held by HUD, HUD's remedies under the Borrower's
1147 Regulatory Agreement or afforded by applicable law, and each shall be cumulative and may be
1148 exercised concurrently, independently, or successively, in any order.
1149

1150 **24. FORBEARANCE.**
1151

1152 (a) So long as the Loan is insured by HUD, Lender shall not without obtaining the
1153 prior written consent of HUD, take any of the following actions: extend the time for payment of
1154 all or any part of the Indebtedness; reduce the payments due under this Security Instrument or the
1155 Note; release anyone liable for the payment of any amounts under this Security Instrument or the
1156 Note; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness;
1157 join in any extension or subordination agreement; release any Mortgaged Property; take or
1158 release other or additional security; modify the rate of interest or period of amortization of the
1159 Note or change the amount of the monthly installments payable under the Note; and otherwise
1160 modify this Security Instrument or the Note. However, if the Contract of Insurance has been
1161 terminated, Lender may (but shall not be obligated to) agree with Borrower to any of the
1162 aforementioned actions in this Section and Lender shall not have to give Notice to or obtain the
1163 consent of any guarantor or third-party obligor.
1164

1165 (b) Any forbearance by Lender in exercising any right or remedy under the Note, this
1166 Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall
1167 not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of
1168 payment of all or any part of the Indebtedness after the due date of such payment, or in an
1169 amount that is less than the required payment, shall not be a waiver of Lender's right to require
1170 prompt payment when due of all other payments on account of the Indebtedness or to exercise
1171 any right or remedy for any failure to make prompt payment. Enforcement by Lender of any
1172 security for the Indebtedness shall not constitute an election by Lender of remedies so as to
1173 preclude the exercise of any other right available to Lender. Lender's receipt of any proceeds or
1174 awards under Section 19 and Section 20 shall not operate to cure or waive any Event of Default.
1175

1176 **25. LOAN CHARGES.** If any applicable law limiting the amount of interest or
1177 other charges permitted to be collected from Borrower in connection with the Loan is interpreted
1178 so that any interest or other charge provided for in any Loan Document, whether considered

1179 separately or together with other charges provided for in any Loan Document, violates that law,
1180 and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the
1181 extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in
1182 excess of the permitted amounts shall be applied by Lender to reduce the principal of the
1183 Indebtedness. For the purpose of determining whether any applicable law limiting the amount of
1184 interest or other charges permitted to be collected from Borrower has been violated, all
1185 Indebtedness that constitutes interest, as well as all other charges made in connection with the
1186 Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the
1187 stated term of the Note. Unless otherwise required by applicable law, such allocation and
1188 spreading shall be effected in such a manner that the rate of interest so computed is uniform
1189 throughout the stated term of the Note.

1190
1191 **26. WAIVER OF STATUTE OF LIMITATIONS.** To the extent permitted by law,
1192 Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement
1193 of the lien of this Security Instrument or to any action brought to enforce any of the Loan
1194 Documents.

1195
1196 **27. WAIVER OF MARSHALLING.** Notwithstanding the existence of any other
1197 security interests in the Mortgaged Property held by Lender or by any other party, Lender shall
1198 have the right to determine the order in which any or all of the Mortgaged Property shall be
1199 subjected to the remedies provided in this Security Instrument and the Note or applicable law.
1200 Lender shall have the right to determine the order in which any or all portions of the
1201 Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies.
1202 Borrower and any party who now or in the future acquires a security interest in the Mortgaged
1203 Property and who has actual or constructive notice of this Security Instrument waives any and all
1204 right to require the marshalling of assets or to require that any of the Mortgaged Property be sold
1205 in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as
1206 an entirety in connection with the exercise of any of the remedies permitted by applicable law or
1207 provided in this Security Instrument.

1208
1209 **28. FURTHER ASSURANCES.** Borrower shall execute, acknowledge, and deliver,
1210 at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel
1211 certificates, financing statements, transfers and assurances as Lender may require from time to
1212 time in order to better assure, grant, and convey to Lender the rights intended to be granted, now
1213 or in the future, to Lender under this Security Instrument and the Note.

1214
1215 **29. ESTOPPEL CERTIFICATE.** Within ten (10) days after a request from Lender,
1216 Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower,
1217 certifying to Lender or any person designated by Lender, as of the date of such statement, (a) that
1218 the Note, (so long as the Loan is insured by HUD, the Borrower's Regulatory Agreement) and
1219 this Security Instrument are unmodified and in full force and effect (or, if there have been
1220 modifications, that the Note, (so long as the Loan is insured by HUD, the Borrower's Regulatory
1221 Agreement) and this Security Instrument are in full force and effect as modified and setting forth

1222 such modifications); (b) the unpaid principal balance of the Note; (c) the date to which interest
1223 under the Note has been paid; (d) that Borrower is not in default in paying the Indebtedness or in
1224 performing or observing any of the covenants or agreements contained in this Security
1225 Instrument, and the Note and (so long as the Loan is insured or held by HUD, the Borrower's
1226 Regulatory Agreement) (or, if Borrower is in default, describing such default in reasonable
1227 detail); (e) whether or not there are then existing any setoffs or defenses known to Borrower
1228 against the enforcement of any right or remedy of Lender under the Note, (so long as the Loan is
1229 insured or held by HUD, the Borrower's Regulatory Agreement) and this Security Instrument;
1230 and (f) any additional facts requested by Lender.

1231

1232 **30. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

1233

1234 (a) This Security Instrument and the Note, if it does not itself expressly identify the
1235 law that is to apply to it, shall be governed by the laws of the Property Jurisdiction, except so
1236 long as the Loan is insured or held by HUD and solely as to rights and remedies of HUD as such
1237 local or state laws may be preempted by federal law.

1238

1239 (b) Borrower agrees that any controversy arising under or in relation to the Note or
1240 this Security Instrument shall be litigated exclusively in the Property Jurisdiction except as, so
1241 long as the Loan is insured or held by HUD and, solely as to rights and remedies of HUD,
1242 federal jurisdiction may be appropriate pursuant to any federal requirements. The State courts,
1243 and with respect to HUD's rights and remedies, federal courts and Governmental Authorities in
1244 the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise
1245 under or in relation to the Note, any security for the Indebtedness, or this Security Instrument.
1246 Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such
1247 litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual
1248 residence or otherwise.

1249

1250 **31. NOTICE.**

1251

1252 (a) All Notices under or concerning this Security Instrument shall be in writing. Each
1253 Notice shall be addressed to the intended recipients at their respective addresses set forth in this
1254 Security Instrument, and shall be deemed given on the earliest to occur of (1) the date when the
1255 Notice is received by the addressee; (2) the first or second Business Day after the Notice is
1256 delivered to a recognized overnight courier service, with arrangements made for payment of
1257 charges for next or second Business Day delivery, respectively; or (3) the third Business Day
1258 after the Notice is deposited in the United States mail with postage prepaid, certified mail, return
1259 receipt requested. Failure of Lender to send Notice to Borrower or its Principal(s) shall not
1260 prevent the exercise of Lender's rights or remedies under this Security Instrument or under the
1261 Loan Documents.

1262

1263 (b) Any party to this Security Instrument may change the address to which Notices
1264 intended for it are to be directed by means of Notice given to the other party in accordance with

1265 this Section 31. Each party agrees that it shall not refuse or reject delivery of any Notice given in
1266 accordance with this Section 31, that it shall acknowledge, in writing, the receipt of any Notice
1267 upon request by the other party and that any Notice rejected or refused by it shall be deemed for
1268 purposes of this Section 31 to have been received by the rejecting party on the date so refused or
1269 rejected, as conclusively established by the records of the U.S. Postal Service or the courier
1270 service.

1271
1272 (c) Any Notice under the Note which does not specify how Notice is to be given shall
1273 be given in accordance with this Section 31.
1274

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1276 **BORROWER:**

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1278 **PRINCIPAL(S):** *[optional]*

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1280 **LENDER:**

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1283 **32. SALE OF NOTE; CHANGE IN SERVICER.** The Note or a partial interest in
1284 the Note (together with this Security Instrument) may be sold one or more times without prior
1285 Notice to Borrower. A sale may result in a change of the loan servicer. There also may be one
1286 or more changes of the loan servicer unrelated to a sale of the Note. If there is a sale or transfer
1287 of all or a partial interest in the Note or a change of the loan servicer, Lender shall be responsible
1288 for ensuring that Borrower is given Notice of the sale, transfer and/or change.
1289

1290 **33. SINGLE ASSET BORROWER.** Until the Indebtedness is paid in full or unless
1291 otherwise approved in writing by HUD so long as the Loan is insured or held by HUD, (a)
1292 Borrower shall be a single purpose entity and shall maintain the assets of the Mortgaged Property
1293 in segregated accounts in accordance with the Borrower's Regulatory Agreement and Program
1294 Obligations and (b) Borrower (1) shall not acquire any real or personal property other than the
1295 Mortgaged Property and personal property related to the operation and maintenance of the
1296 Mortgaged Property, and so long as the Loan is insured or held by HUD, except pursuant to the
1297 Borrower's Regulatory Agreement and Program Obligations and (2) shall not own or operate any
1298 business other than the ownership, management and/or operation of the Mortgaged Property, and
1299 so long as the Loan is insured or held by HUD, except pursuant to the Borrower's Regulatory
1300 Agreement and Program Obligations.

1301
1302 **34. SUCCESSORS AND ASSIGNS BOUND.** This Security Instrument shall bind,
1303 and the rights granted by this Security Instrument shall inure to, the respective successors and
1304 assigns of Lender and Borrower.

1305
1306 **35. JOINT AND SEVERAL LIABILITY.** If more than one entity signs this
1307 Security Instrument as Borrower, the obligations of such entities shall be joint and several.

1308
1309 **36. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**
1310

1311 (a) The relationship between Lender and Borrower shall be solely that of creditor and
1312 debtor, respectively, and nothing contained in this Security Instrument shall create any other
1313 relationship between Lender and Borrower.
1314

1315 (b) No creditor of any party to this Security Instrument and no other person (the term
1316 “person” includes, but is not limited to, any commercial or governmental entity or institution)
1317 shall be a third party beneficiary of this Security Instrument, the Note, or so long as the Loan is
1318 insured or held by HUD, the Borrower’s Regulatory Agreement. Without limiting the generality
1319 of the preceding sentence, (1) any servicing arrangement between Lender and any loan servicer
1320 for loss sharing or interim advancement of funds shall constitute a contractual obligation of such
1321 loan servicer that is independent of the obligation of Borrower for the payment of the
1322 Indebtedness, (2) Borrower shall not be a third party beneficiary of any servicing arrangement,
1323 and (3) no payment by the loan servicer under any servicing arrangement shall reduce the
1324 amount of the Indebtedness.
1325

1326 **37. SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any
1327 provision of this Security Instrument shall not affect the validity or enforceability of any other
1328 provision, and all other provisions shall remain in full force and effect. This Security Instrument
1329 contains the entire agreement among the parties as to the rights granted and the obligations
1330 assumed in this Security Instrument. This Security Instrument may not be amended or modified
1331 except by a writing signed by the party against whom enforcement is sought.
1332

1333 **38. RULES OF CONSTRUCTION.** The captions and headings of the Sections of
1334 this Security Instrument are for convenience only and shall be disregarded in construing this
1335 Security Instrument. Any reference in this Security Instrument to an “**Exhibit**” or a “**Section**”
1336 shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit
1337 attached to this Security Instrument or to a Section of this Security Instrument. All Exhibits
1338 attached to or referred to in this Security Instrument are incorporated by reference into this
1339 Security Instrument. Use of the singular in this Security Instrument includes the plural and use
1340 of the plural includes the singular. As used in this Security Instrument, the term “**including**”
1341 means “including, but not limited to.”
1342

1343 **39. LOAN SERVICING.** All actions regarding the servicing of the Note, including
1344 the collection of payments, the giving and receipt of Notice, inspections of the Mortgaged
1345 Property, inspections of books and records, and the granting of consents and approvals, may be
1346 taken by the loan servicer unless Borrower receives Notice to the contrary. If Borrower receives
1347 conflicting Notices regarding the identity of the loan servicer or any other subject, any such
1348 Notice from Lender shall govern; provided that so long as the Loan is insured or held by HUD, if
1349 Borrower receives conflicting Notice regarding the identity of the loan servicer or any other

1350 subject, any such Notice from Lender shall govern unless there is a Notice from HUD and, in all
1351 cases, any Notice from HUD governs notwithstanding any Notice from any other party.
1352

1353 **40. DISCLOSURE OF INFORMATION.** To the extent permitted by law, Lender
1354 may furnish information regarding Borrower or the Mortgaged Property to third parties with an
1355 existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase
1356 or securitization of the Indebtedness, including but not limited to trustees, master servicers,
1357 special servicers, rating agencies, and organizations maintaining databases on the underwriting
1358 and performance of healthcare mortgage loans.
1359

1360 **41. NO CHANGE IN FACTS OR CIRCUMSTANCES.** Borrower certifies that all
1361 information in the application for the Loan submitted to Lender (the “**Loan Application**”) and in
1362 all financial statements, rent rolls, reports, certificates and other documents submitted in
1363 connection with the Loan Application are complete and accurate in all material respects and that
1364 there has been no material adverse change in any fact or circumstance that would make any such
1365 information incomplete or inaccurate. The submission of false or incomplete information shall
1366 be a Covenant Event of Default.
1367

1368 **42. ESTOPPEL.** The Lender is not the agent of HUD. Any action by Lender in
1369 exercising any right or remedy under this Security Instrument shall not be a waiver or preclude
1370 the exercise by HUD of any right or remedy which HUD might have under the Borrower’s
1371 Regulatory Agreement or other Program Obligations.
1372

1373 **43. ACCELERATION; REMEDIES.** If a Monetary Event of Default occurs and is
1374 continuing for a period of thirty (30) days, Lender, at Lender’s option, may declare the
1375 Indebtedness to be immediately due and payable without further demand, and may invoke the
1376 power of sale and any other remedies permitted by applicable law or provided in this Security
1377 Instrument or in the Note. Following a Covenant Event of Default, Lender, at Lender’s option,
1378 but so long as the Loan is insured or held by HUD, only after receipt of the prior written
1379 approval of HUD, may declare the Indebtedness to be immediately due and payable without
1380 further demand, and may invoke the power of sale and any other remedies permitted by
1381 applicable law or provided in this Security Instrument or in the Note, or seek the appointment of
1382 a receiver for the Healthcare Facility. Borrower acknowledges that the power of sale granted in
1383 this Security Instrument may be exercised by Lender without prior judicial hearing. Lender shall
1384 be entitled to collect all costs and expenses incurred in pursuing such remedies, including
1385 reasonable attorneys’ fees (including but not limited to appellate litigation), costs of
1386 documentary evidence, abstracts and title reports.
1387

1388 ***[INSERT PROVISIONS PERTAINING TO FORECLOSURE AND/OR SALE AS***
1389 ***APPROPRIATE UNDER STATE LAW IN A STATE-SPECIFIC ADDENDUM.]***
1390

1391 **44. FEDERAL REMEDIES.** In addition to any rights and remedies set forth in the
1392 Borrower’s Regulatory Agreement, HUD has rights and remedies under federal law so long as

1393 HUD is the insurer or holder of the Loan, including but not limited to the right to foreclose
1394 pursuant to the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701 *et seq.*, as
1395 amended, when HUD is the holder of the Note.
1396

1397 **45. REMEDIES FOR WASTE.** In addition to any other rights and remedies set
1398 forth in the Note and this Security Instrument or those available under applicable law, including
1399 exemplary damages where permitted, the following remedies for Waste by Borrower are
1400 available to Lender as necessary to give complete redress to Lender for Lender's loss or damage:
1401

1402 (a) the exercise of the remedies available to Lender during the existence of a
1403 Covenant Event of Default, as set forth in Section 43 of this Security Instrument;
1404

1405 (b) an injunction prohibiting future Waste or requiring correction of Waste already
1406 committed, but only to the extent that Waste has impaired or threatens to impair Lender's
1407 security; and
1408

1409 (c) recovery of damages, limited by the amount of Waste, to the extent that Waste has
1410 impaired Lender's security. So long as the Loan is insured or held by HUD, any recovery of
1411 damages by Lender or HUD for Waste shall be applied, at the sole discretion of HUD, (1) to
1412 fees, costs and expenses (including reasonable attorneys' fees) incurred by Lender; (2) to remedy
1413 Waste of the Mortgaged Property, (3) to the Indebtedness or (4) for any other purpose designated
1414 by HUD.
1415

1416 **46. TERMINATION OF HUD RIGHTS AND REFERENCES.** At such time as
1417 HUD no longer insures or holds the Note, (a) all rights and responsibilities of HUD shall
1418 conclude, all mortgage insurance and references to mortgage insurance premiums, all references
1419 to HUD, Ginnie Mae and Program Obligations and related terms and provisions shall cease, and
1420 all rights and obligations of HUD shall terminate; (b) all obligations and responsibilities of
1421 Borrower to HUD shall likewise terminate; and (c) all obligations and responsibilities of Lender
1422 to HUD shall likewise terminate; provided, however, nothing contained in this Section 46, shall
1423 in any fashion discharge Borrower from any obligations to HUD under the Borrower's
1424 Regulatory Agreement or Program Obligations or Lender from any obligations to HUD under
1425 Program Obligations, which occurred prior to termination of the Contract of Insurance. The
1426 provisions of this Section 46 shall be given effect automatically upon the termination of the
1427 Contract of Insurance or the transfer of this Security Instrument by HUD to another party,
1428 provided that upon the request of Borrower, Lender or the party to whom this Security
1429 Instrument has been transferred, at no cost to HUD, HUD shall execute such documents as may
1430 be reasonably requested to confirm the provisions of this Section 46.
1431

1432 **47. CONSTRUCTION FINANCING [IF APPLICABLE].** The Indebtedness
1433 represents funds to be used in the construction of certain Improvements on the Land, in
1434 accordance with the Building Loan Agreement which is incorporated herein by reference to the
1435 same extent and effect as if fully set forth and made herein (provided, however, that if and to the

1436 extent that the Building Loan Agreement is inconsistent herewith, this Security Instrument shall
1437 govern). If the construction of the Improvements to be made pursuant to the Building Loan
1438 Agreement are not made in accordance with the terms of said Building Loan Agreement, or
1439 Borrower otherwise defaults under the Building Loan Agreement, Lender, after due Notice to
1440 Borrower, or any subsequent owner, is hereby vested with full and complete authority to enter
1441 upon the Land to employ watchmen to protect such Improvements from depredation or injury
1442 and to preserve and protect the Personalty therein, to continue any and all outstanding contracts
1443 for the erection and completion of said Improvements, to make and enter into any contracts and
1444 obligations wherever necessary, either in its own name or in the name of Borrower, or other
1445 owner, and to pay and discharge all debts, obligations, and liabilities incurred thereby. All such
1446 sums so advanced by Lender (exclusive of advances of the principal of the Indebtedness) shall be
1447 added to the principal of the Indebtedness secured hereby and all shall be secured by this
1448 Security Instrument and shall be due and payable on demand with interest at the rate provided in
1449 the Note, but no such advances shall be insured unless same are specifically approved by HUD
1450 prior to the making thereof. The Indebtedness shall, at the option of Lender or holder of this
1451 Security Instrument and the Note, become due and payable on the failure of Borrower, or other
1452 owner, to keep and perform any of the covenants, conditions and agreements of the Building
1453 Loan Agreement. This covenant shall be terminated upon the completion of the Improvements
1454 to the satisfaction of Lender and the making of the final advance as provided in the Building
1455 Loan Agreement.

1456
1457 **48. ENVIRONMENTAL HAZARDS.**

1458
1459 *[INSERT PROVISIONS AS NEEDED TO COMPLY WITH STATE ENVIRONMENTAL LAW IN*
1460 *STATE-SPECIFIC ADDENDUM.]*

1461
1462 (a) Definitions:

1463
1464 (1) **“Hazardous Materials”** means petroleum and petroleum products and
1465 compounds containing them, including gasoline, diesel fuel and oil;
1466 explosives; flammable materials; radioactive materials; polychlorinated
1467 biphenyls (**“PCBs”**) and compounds containing them; lead and lead-based
1468 paint; asbestos or asbestos-containing materials in any form that is or
1469 could become friable; underground or above-ground storage tanks,
1470 whether empty or containing any substance; any substance the presence of
1471 which on the Mortgaged Property is prohibited by any Governmental
1472 Authority; any substance that requires special handling; and any other
1473 material or substance now or in the future defined as a “hazardous
1474 substance,” “hazardous material,” “hazardous waste,” “toxic substance,”
1475 toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any
1476 Hazardous Materials Law.

1477
1478 (2) **“Hazardous Materials Laws”** means all federal, state, and local laws,

1479 ordinances and regulations and standards, rules, policies and other
1480 governmental requirements, administrative rulings and court judgments
1481 and decrees in effect now or in the future and including all amendments
1482 that relate to Hazardous Materials and apply to Borrower or to the
1483 Mortgaged Property. Hazardous Materials Laws include, but are not
1484 limited to, the Comprehensive Environmental Response, Compensation
1485 and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource
1486 Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the
1487 Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean
1488 Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials
1489 Transportation Act, 49 U.S.C. Section 5101, *et seq.*, and their state
1490 analogs.

1491
1492 (3) “**Environmental Permit**” means any permit, license, or other
1493 authorization issued under any Hazardous Materials Law with respect to
1494 any activities or businesses conducted on or in relation to the Mortgaged
1495 Property.

1496
1497 (b) Except for (1) matters covered by a written program of operations and
1498 maintenance approved in writing by Lender (“**O&M Program**”), (2) matters described in
1499 subsection (c) of this Section 48; or (3) (for so long as the Loan is insured or held by HUD)
1500 matters covered by Program Obligations that may differ from this Section 48 (with respect to
1501 lead based paint requirements, for example), Borrower shall not cause or permit any of the
1502 following:

- 1503
1504 (i) any occurrence or condition on the Mortgaged Property or any other
1505 property of Borrower that is adjacent to the Mortgaged Property, which
1506 occurrence or condition is or may be in violation of Hazardous Materials
1507 Laws; or
1508
1509 (ii) any violation of or noncompliance with the terms of any Environmental
1510 Permit with respect to the Mortgaged Property or any property of
1511 Borrower that is adjacent to the Mortgaged Property.

1512
1513 The matters described in clauses (i) and (ii) above are referred to collectively in this Section 48
1514 as “**Prohibited Activities or Conditions**”.

1515
1516 (c) Prohibited Activities or Conditions shall not include the safe and lawful use and
1517 storage of quantities of (1) supplies, cleaning materials and petroleum products customarily used
1518 in the operation and maintenance of comparable healthcare properties, (2) cleaning materials,
1519 personal grooming items and other items sold in containers for consumer use and used by
1520 residents and occupants of residential dwelling units in the Mortgaged Property; and (3)
1521 petroleum products used in the operation and maintenance of motor vehicles and motor-operated

1522 equipment from time to time located on the Mortgaged Property's parking areas, so long as all of
1523 the foregoing are used, stored, handled, transported and disposed of in compliance with
1524 Hazardous Materials Laws.

1525

1526 (d) Borrower shall take all commercially reasonable actions (including the inclusion
1527 of appropriate provisions in any Leases executed after the date of this Security Instrument) to
1528 prevent its employees, agents, and contractors, and all residents and other occupants from
1529 causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow
1530 the sublease or use of all or any portion of the Mortgaged Property to any resident or sublessee
1531 for nonresidential use by any user that, in the ordinary course of its business, would cause or
1532 permit any Prohibited Activities or Conditions.

1533

1534 (e) If an O&M Program has been established with respect to Hazardous Materials,
1535 Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors
1536 of Borrower and any other persons encompassed by the O&M Program and present on the
1537 Mortgaged Property to comply with the O&M Program. All costs of performance of Borrower's
1538 obligations under any O&M Program shall be paid by Borrower, and Lender's out-of-pocket
1539 costs incurred in connection with the monitoring and review of the O&M Program and
1540 Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-
1541 pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of
1542 the Indebtedness as provided in Section 13; provided that so long as the Loan is insured by HUD,
1543 no advances made by Lender under this subsection (e) shall become an additional part of the
1544 Indebtedness unless such advances receive the prior written approval of HUD and provided
1545 further that unless approved by HUD, Lender shall have no obligation to make any such
1546 advances.

1547

1548 (f) Borrower represents and warrants to Lender that, except as previously disclosed
1549 by Borrower to Lender in writing:

1550

1551 (1) Borrower has not at any time engaged in, caused or permitted any
1552 Prohibited Activities or Conditions;

1553

1554 (2) to the best of Borrower's knowledge after reasonable and diligent inquiry,
1555 no Prohibited Activities or Conditions exist or have existed;

1556

1557 (3) the Mortgaged Property does not now contain any underground storage
1558 tanks, and, to the best of Borrower's knowledge after reasonable and
1559 diligent inquiry, the Mortgaged Property has not contained any
1560 underground storage tanks in the past. If there is an underground storage
1561 tank located on the Mortgaged Property that has been previously disclosed
1562 by Borrower to Lender in writing, that tank complies with all requirements
1563 of Hazardous Materials Laws;

1564

- 1565 (4) Borrower has complied with all Hazardous Materials Laws, including all
1566 requirements for notification regarding releases of Hazardous Materials.
1567 Without limiting the generality of the foregoing, Borrower has obtained all
1568 Environmental Permits required for the operation of the Mortgaged
1569 Property in accordance with Hazardous Materials Laws now in effect and
1570 all such Environmental Permits are in full force and effect; no event has
1571 occurred with respect to the Mortgaged Property that constitutes, or with
1572 the passing of time or the giving of Notice would constitute,
1573 noncompliance with the terms of any Environmental Permit;
1574
- 1575 (5) to the best of Borrower's knowledge after reasonable and diligent inquiry,
1576 there are no actions, suits, claims or proceedings, pending or threatened,
1577 that involve the Mortgaged Property and allege, arise out of, or relate to
1578 any Prohibited Activities or Conditions; and
1579
- 1580 (6) Borrower has not received any complaint, order, notice of violation or
1581 other communication from any Governmental Authority with regard to air
1582 emissions, water discharges, noise emissions or Hazardous Materials, or
1583 any other environmental, health or safety matters affecting the Mortgaged
1584 Property or any other property of Borrower that is adjacent to the
1585 Mortgaged Property that have not previously been resolved legally.
1586

1587 The representations and warranties in this Section 48 shall be continuing representations and
1588 warranties that shall be deemed to be made by Borrower throughout the term of the Loan, until
1589 the Indebtedness has been paid in full.
1590

1591 (g) Borrower shall promptly notify Lender in writing upon the occurrence of any of
1592 the following events:
1593

- 1594 (1) Borrower's discovery of any Prohibited Activities or Conditions;
1595
- 1596 (2) Borrower's receipt of or knowledge of any complaint, order, notice of
1597 violation or other communication from any Governmental Authority or
1598 other person with regard to present or future alleged Prohibited Activities
1599 or Conditions or any other environmental, health or safety matters
1600 affecting the Mortgaged Property or any other property of Borrower that is
1601 adjacent to the Mortgaged Property; and
1602
- 1603 (3) any representation or warranty in this Section 48 becoming untrue after
1604 the date of this Security Instrument.
1605

1606 Any such Notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any
1607 obligation under this Security Instrument, the Note, or any other Loan Document.

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(h) Borrower shall pay promptly the costs of any environmental inspections, tests or audits (“**Environmental Inspections**”) required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender’s consent to any transfer under Section 21, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial (appellate or otherwise) or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 13; provided that so long as the Loan is insured by HUD, no advances made by Lender under this subsection (h) shall become an additional part of the Indebtedness unless such advances receive the prior written approval of HUD and provided further that unless approved by HUD, Lender shall have no obligation to make such further advances. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to any party other than Borrower, and so long as the Loan is insured by HUD, to HUD, such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender’s Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender’s Environmental Inspections.

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

1651 unless such advances receive the prior written approval of HUD and provided further that unless
1652 approved by HUD, Lender shall have no obligation to make any such advances.

1653
1654 (j) Borrower shall cooperate with any inquiry by any Governmental Authority and
1655 shall comply with any governmental or judicial order which arises from any alleged Prohibited
1656 Activities or Conditions.

1657
1658 (k) Borrower shall indemnify [if Borrower is located in a state that requires an
1659 indemnification agreement separate and apart from this Security Instrument, Borrower shall
1660 provide said indemnification agreement to Lender], hold harmless and defend (1) Lender, (2) any
1661 prior owner or holder of the Note, (3) the loan servicer, (4) any prior loan servicer, (5) the
1662 officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (6)
1663 the heirs, legal representatives, successors and assigns of each of the foregoing (each an
1664 “**Indemnitee**”, and collectively, “**Indemnitees**”) from and against all proceedings, claims,
1665 damages, penalties and costs (whether initiated or sought by Governmental Authorities or private
1666 parties), including fees and out of pocket expenses of attorneys and expert witnesses,
1667 investigatory fees, and remediation costs, whether incurred in connection with any judicial
1668 (including appellate) or administrative process or otherwise, arising directly or indirectly from
1669 any of the following except where the Mortgaged Property became contaminated subsequent to
1670 any transfer of ownership which was approved in writing by Lender (and so long as the Loan is
1671 insured or held by HUD, by HUD), provided such transferee assumes in writing all obligations
1672 of Borrower with respect to Prohibited Activities or Conditions:

1673
1674 (i) any breach of any representation or warranty of Borrower in this Section
1675 48;

1676
1677 (ii) any failure by Borrower to perform or comply with any of its obligations
1678 under this Section 48;

1679
1680 (iii) the existence or alleged existence of any Prohibited Activities or
1681 Conditions;

1682
1683 (iv) the actual or alleged violation of any Hazardous Materials Law.

1684
1685 (l) Counsel selected by Borrower to defend Indemnitees shall be subject to the
1686 approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal
1687 or administrative proceeding at Borrower’s expense.

1688
1689 (m) Borrower shall not, without the prior written consent of those Indemnitees who
1690 are named as parties to a claim or legal or administrative proceeding (“**Claim**”), settle or
1691 compromise the Claim if the settlement (1) results in the entry of any judgment that does not
1692 include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written
1693 release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially

1694 and adversely affect Lender, as determined by Lender in its discretion.

1695

1696 (n) Borrower's obligation to indemnify the Indemnitees shall not be limited or
1697 impaired by any of the following, or by any failure of Borrower or any guarantor to receive
1698 Notice of or consideration for any of the following:

1699

1700 (1) any amendment or modification of any Loan Document;

1701

1702 (2) any extensions of time for performance required by any Loan Document;

1703

1704 (3) the accuracy or inaccuracy of any representations and warranties made by
1705 Borrower under this Security Instrument or any other Loan Document;

1706

1707 (4) the release of Borrower or any other person, by Lender or by operation of
1708 law, from performance of any obligation under any Loan Document;

1709

1710 (5) the release or substitution in whole or in part of any security for the
1711 Indebtedness; and

1712

1713 (6) Lender's failure to properly perfect any lien or security interest
1714 given as security for the Indebtedness.

1715

1716 (o) Borrower shall, at its own cost and expense, do all of the following:

1717

1718 (1) pay or satisfy any judgment or decree that may be entered against any
1719 Indemnitee or Indemnitees in any legal or administrative proceeding
1720 incident to any matters against which Indemnitees are entitled to be
1721 indemnified under this Section 48;

1722

1723 (2) reimburse Indemnitees for any expenses paid or incurred in connection
1724 with any matters against which Indemnitees are entitled to be indemnified
1725 under this Section 48; and

1726

1727 (3) reimburse Indemnitees for any and all expenses, including fees and out-of-
1728 pocket expenses of attorneys and expert witnesses, paid or incurred in
1729 connection with the enforcement by Indemnitees of their rights under this
1730 Section 48, or in monitoring and participating in any legal (including
1731 appellate) or administrative proceeding.

1732

1733 (p) In any circumstances in which the indemnity under this Section 48 applies,
1734 Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any
1735 claim or legal or administrative proceeding and Lender, with the prior written consent of
1736 Borrower (which shall not be unreasonably withheld, delayed or conditioned), may settle or

1737 compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender
1738 upon demand for all costs and expenses incurred by Lender, including all costs of settlements
1739 entered into in good faith, and the fees and out of pocket expenses of such attorneys (including
1740 but not limited to appellate litigation) and consultants.
1741

1742 (q) The provisions of this Section 48 shall be in addition to any and all other
1743 obligations and liabilities that Borrower may have under applicable law or under other Loan
1744 Documents, and each Indemnitee shall be entitled to indemnification under this Section 48
1745 without regard to whether Lender or that Indemnitee has exercised any rights against the
1746 Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued
1747 any other rights available under the Loan Documents or applicable law. If Borrower consists of
1748 more than one entity, the obligation of those entities to indemnify the Indemnitees under this
1749 Section 48 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees
1750 under this Section 48 shall survive any repayment or discharge of the Indebtedness, any
1751 foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and
1752 any release of record of the lien of this Security Instrument. Notwithstanding anything in
1753 Section 48 to the contrary, so long as the Loan is insured or held by HUD, indemnification costs
1754 and reimbursements to Lender or to any or all Indemnitees shall be paid only from the available
1755 proceeds of an appropriate insurance policy or from Surplus Cash (if applicable) or other escrow
1756 accounts.
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1758 (r) So long as the Loan is insured or held by HUD, all references to Lender in this
1759 Section 48 shall also be construed to refer to HUD as its interest appears (solely as determined
1760 by HUD) and all notifications to Lender must also be made to HUD and all Lender approvals
1761 and exercises of discretion by Lender under this Section 48 must first have the prior written
1762 approval of HUD, provided, that, so long as the Loan is insured or held by HUD, the reference to
1763 Lender as an Indemnitee shall be construed to refer to HUD, and Borrower's obligations to
1764 indemnify HUD as an Indemnitee shall remain in effect in accordance with this Section 48,
1765 notwithstanding the termination or expiration of insurance of the Loan by HUD.
1766

1767 (s) To the extent any HUD environmental requirements or standards are inconsistent
1768 or conflict with the provisions of this Section 48, the HUD requirements or standards shall
1769 control so long as the Loan is insured or held by HUD.
1770

1771 **49. COUNTERPART SIGNATURES.** This document may be executed in
1772 counterpart.
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1774 **50. STATE LAW REQUIREMENTS.** [Add any State specific requirements for
1775 future advances, credit line or open end mortgages, or otherwise, as required.]
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1777 **51. ATTACHED EXHIBITS.** The following Exhibits are attached to this Security
1778 Instrument:
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- Exhibit A Description of the Land (required)
- Exhibit B Modifications to Security Instrument

IN WITNESS WHEREOF, Borrower has signed and delivered this Security Instrument or has caused this Security Instrument to be signed and delivered by its duly authorized representative, as a sealed instrument.

[SIGNATURES AND ACKNOWLEDGMENTS]

DRAFT

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EXHIBIT A

[LEGAL DESCRIPTION OF THE LAND]

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EXHIBIT B

Modifications to Security Instrument

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

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