

**Master TenantDebtor  
Security Agreement  
Section 232**

**U.S. Department of Housing  
and Urban Development**  
Office of Healthcare Programs

OMB Approval No. 9999-9999  
(exp. mm/dd/yyyy)

**Public reporting** burden for this collection of information is estimated to average 1 hour. 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. Response to this request for information is required in order to receive the benefits to be derived. 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. No confidentiality is assured.

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Recording requested by:

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After recording return to:

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[PROJECT NAME]  
FHA Project No. \_\_\_\_\_

**THIS MASTER TENANT SECURITY AGREEMENT** (~~the~~this "Agreement") is made, entered into and dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between [MASTER TENANT], a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_, whose principal place of business is located at \_\_\_\_\_ (the "~~Master Tenant~~Debtor"<sup>1</sup>); and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the

<sup>1</sup> COMMENT – The Uniform Commercial Code, which governs the granting of security interests in non-realty collateral, uses the term "Debtor." Therefore, in order to stay consistent with the operative area of the law, and HUD's use of the term "Secured Party" in this Agreement, we suggest using the term Debtor to describe the Master Tenant. This will also clarify the respective roles of the parties within this Agreement and the UCC-1 financing statements.

laws of the State of \_\_\_\_\_ and having an address at \_\_\_\_\_ (the "Secured Party" ~~or the "Lender";~~<sup>2</sup>), as follows:

### **Recitals**

A. Contemporaneously with this Agreement, the Secured Party has made a loan to \_\_\_\_\_ (the "Borrower") in the maximum principal amount of \$\_\_\_\_\_.00 (the "Loan"). The Loan is evidenced by the Healthcare Facility Note made by the Borrower in favor of the Secured Party, dated as of even date herewith (the "Note") in connection with the operation of a healthcare facility commonly known as [\_\_\_\_\_] (the "Healthcare Facility"), ~~authorized to receive mortgage insurance pursuant to Section 232 of the National Housing Act, as amended, or any subsequent legislation,~~<sup>3</sup> and located on the real property legally described on Exhibit A-1 attached hereto and incorporated herein by reference (the "Land") (the Healthcare Facility and any other improvements situated on the Land are referred to herein as the "Improvements") (the Land, the Healthcare Facility, and any other Improvements, together with any and all assets of whatever nature or wherever situated related to the Loan, are hereinafter sometimes referred to as the "Project").

~~B.~~ Borrower has leased, *inter alia*, the Healthcare Facility, to ~~Master Tenant~~ Debtor pursuant to that certain [Name of Master Lease], dated as of [\_\_\_\_\_] , as amended from time to time ("Master Lease"). ~~Master Tenant~~ Debtor has subleased the Healthcare Facility to [\_\_\_\_\_] (the "Operator") to operate the Healthcare Facility, pursuant to that certain [title of Operator's sub-lease with ~~Master Tenant~~] dated as of [\_\_\_\_\_] (~~"Sublease"~~). ~~Operator is subject to that certain Regulatory Agreement (Operator) for Healthcare, relating to the Healthcare Facility and made as of substantially even date herewith, as the same may be amended from time to time ("Operator's Regulatory Agreement"). Master Tenant is subject to that certain Regulatory Agreement (Master Tenant) for Healthcare, relating to the Healthcare Facility and made as of substantially even date herewith, as the same may be amended from time to time ("Master Tenant's Regulatory Agreement").~~ Debtor] dated as of [\_\_\_\_\_] (~~"Sublease"~~).

C. ~~Operator is subject to that certain Healthcare Regulatory Agreement -Operator between the Secretary of United States Department of Housing and Urban Development, acting by and through the Secretary, his or her successors, assigns or designates ("HUD") and Operator dated [as of even date herewith], as the same may be amended from time to time ("Operator's Regulatory Agreement"). Debtor is subject to that certain Regulatory Agreement Master Tenant between HUD and Debtor and dated as of even date herewith, as the same may be amended from time to time (the "Master Tenant's Regulatory Agreement").~~

~~B.D.~~ In addition to the Healthcare Facility, ~~Master Tenant~~ Debtor is leasing a number of other healthcare facilities ("Other Healthcare Facilities"), pursuant to the Master Lease, and subleasing each in turn to an affiliated operator (collectively, "Other Operators"), each pursuant to a sublease agreement (collectively the "Other Subleases"), located on the parcels of real

<sup>2</sup> COMMENT – The term "Lender" is not used.

<sup>3</sup> COMMENT – The second recital more appropriately describes the HUD insurance.

property ~~legally~~<sup>4</sup> described on Exhibit A-2 attached hereto and incorporated herein by reference. Secured Party has or shall extend loans in connection with each of the Other Healthcare Facilities, each such loan insured by HUD pursuant to Section ~~232~~ of the National Housing Act, as amended, or subsequent legislation (the "Other FHA-insured Loans").

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~~C.E.~~ As security for the Obligations (as defined below), the Borrower (i) granted to the Secured Party the Healthcare [*Mortgage, Deed of Trust, Deed to Secure Debt, Security Deed or other Designation as appropriate in Jurisdiction*], Assignment of Leases and Revenue and Security Agreement, dated as of even date herewith, encumbering the Project, which has been or is concurrently herewith being recorded in the real estate records of the jurisdiction in which the Land are located (the "Security Instrument"), and (ii) entered into a Regulatory Agreement (Owner) with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner ("HUD"), dated as of even date herewith (the "Borrower's Regulatory Agreement"). The ~~Master Tenant Debtor~~ expects to benefit from the leasing, subleasing, and operation of the Healthcare Facility and has agreed to enter into this Agreement with the Secured Party as additional security for the Obligations. The Note, the Security Instrument, the Borrower's Regulatory Agreement, Operator's Regulatory Agreement, the Master Tenant's Regulatory Agreement, this Agreement, and all other agreements, instruments, and documents which are now existing or are in the future required by and/or delivered to Secured Party and/or HUD in connection with or related to the Loan or the Obligations, whether executed or delivered by or on behalf of Borrower, Operator or ~~Master Tenant Debtor~~, as the same may be amended from time to ~~time~~<sup>time</sup>, are sometimes collectively referred to as the "Loan Documents."

~~D.F.~~ As a party to the Sublease and as an affiliate of the Operator, ~~Master Tenant Debtor~~ acknowledges and believes that it shall benefit directly from the making of the Loan. **[If applicable, include the following sentence: Further, ~~Master Tenant Debtor~~ acknowledges that it is affiliated with, shares common ownership with, and/or has an identity of interest with the Borrower.]**

~~E.G.~~ As used herein, "Healthcare Assets" means (i) any and all licenses, permits and/or approvals issued by any governmental authority with respect to the use or operation of the Healthcare Facility as **[an assisted living or a nursing home]**, (ii) any and all Medicare and Medicaid provider agreements and (iii) any and all "Government Accounts" (as defined below) and "Government Payments" (as defined below).

### **Statement of Agreement**

#### **1. SECURITY INTEREST; SETOFF.**

(a) To secure the full, prompt and complete payment and performance of all Obligations, the ~~Master Tenant Debtor~~ hereby, to the fullest extent permitted by applicable law

<sup>4</sup> COMMENT – Is HUD's intention to attach the narrative legal description for all the Other Healthcare Facilities to this Agreement? Doing so may cause confusion because a similar Debtor Security Agreement will also be obtained on each of the Other Healthcare Facilities. We suggest that Exhibit A-2 provide a listing of each project name and their address. See suggested sample.

with respect to Healthcare Assets, grants to, and creates in favor of, the Secured Party a continuing security interest in any and all of ~~Master Tenant's Debtor's~~ right, title and interest in and to the property described on Exhibit B attached hereto and incorporated herein by reference (the "Collateral"). "Obligations" means: (1), as of any date, the Loan and all other indebtedness, liabilities, obligations, covenants, debts and amounts owing from the Borrower, Operator, and/or ~~Master Tenant Debtor~~ to the Secured Party and/or HUD arising out of, in connection with, described in, or evidenced by the Loan Documents, whether direct or indirect, absolute or contingent, related or unrelated, now or in the future existing and whether consisting of principal, interest, fees, indemnities, expenses (including attorneys' fees), charges or other sums, however any of that indebtedness, obligations, or liabilities may be evidenced or acquired, all as now exist or may, after the date of this Agreement, be incurred, renewed, extended, consolidated, adjusted or amended; (2) ~~Master Tenant's Debtor's~~ rent payments (including all tax, insurance or other capital, repair or impound reserve payments required under the Master Lease) and the performance by ~~Master Tenant Debtor~~ of its obligations under the Master Lease .

(b) In addition to (and without limitation of) any right of setoff, lien or counterclaim the Secured Party may otherwise have, the Secured Party may, at its option, setoff and retain, and may refuse to allow withdrawals by, or for the benefit of the Borrower, Operator, and/or ~~Master Tenant Debtor~~ of, any and all funds, monies, securities and other property held in escrow or for the account of the Borrower, Operator, and/or ~~Master Tenant Debtor~~ pursuant to the Loan Documents, against any amount payable by the Borrower, Operator, and/or the ~~Master Tenant Debtor~~ under the Note, the Mortgage or any of the other Loan Documents which is not paid when due (whether or not any of the funds, monies, securities, or other property are then distributable to, or on behalf of, the ~~Master Tenant Debtor~~).

(c) Notwithstanding any provisions to the contrary contained in this Agreement, nothing set forth in this Agreement shall be construed as granting to Secured Party a security interest, assigning receivables, giving dominion and control or designating an attorney-in-fact with respect to Government Accounts or Government Payments in violation of any applicable law.

## **2. ASSIGNMENT OF LEASES AND RENTS**

(a) ~~Master Tenant Debtor~~ absolutely and unconditionally assigns and transfers to Secured Party all of ~~Master Tenant's Debtor's~~ rights, title and interest in, to and under the Sublease and Other Subleases (collectively, the Sublease and Other Leases are referred to herein as the "Leases," and any one individually as a "Lease" and the Healthcare Facility and Other Facilities are referred to herein collectively as the "Facilities"), including ~~Master Tenant's Debtor's~~ right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of ~~Master Tenant Debtor~~ to establish a present, absolute and irrevocable transfer and assignment to Secured Party of all of ~~Master Tenant's Debtor's~~ right, title and interest in, to and under the Leases. ~~Master Tenant Debtor~~ and Secured Party intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the collateral otherwise described in this Agreement. However, if this present, absolute and unconditional assignment of the Leases is not enforceable

by its terms under the laws of the applicable jurisdictions, then the Leases shall be included as a part of the collateral and it is the intention of ~~Master Tenant Debtor~~ that in this circumstance this ~~Security~~ Agreement create and perfect a lien on the Leases in favor of Secured Party, which lien shall be effective as of the date of this ~~Security~~ Agreement, provided, however, that to the extent ~~Master Tenant Debtor~~ may have granted an assignment or security interest to Secured Party in any of the Other Subleases in connection with any of the Other FHA-insured Loans prior to the execution of this ~~Security~~ Agreement, nothing in this Agreement is intended to nullify, void, amend, modify, delay the effectiveness, effect the priority, or otherwise effect any such assignment or grant of security interest.

(b) Until Secured Party gives Notice to ~~Master Tenant Debtor~~ of Secured Party's exercise of its rights under this assignment, ~~Master Tenant Debtor~~ shall have all rights, power and authority granted to ~~Master Tenant Debtor~~ under any Lease (except as otherwise limited by this Section or any other provision of this ~~Security~~ Agreement), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease as such rights are limited or affected by the terms of the Loan Documents and Program Obligations. Upon the occurrence of an Event of Default, the permission given to ~~Master Tenant Debtor~~ pursuant to the preceding sentence to exercise its rights, power and authority under Leases shall automatically terminate. ~~Master Tenant Debtor~~ agrees to comply with and observe ~~Master Tenant's Debtor's~~ obligations under all Leases, including ~~Master Tenant's Debtor's~~ obligations, if any, pertaining to the maintenance and disposition of security deposits, both prior to and after any such termination of the ~~Master Tenant's Debtor's~~ rights.

(c) ~~Master Tenant Debtor~~ acknowledges and agrees that the exercise by Secured Party, either directly or by its designee, of any of the rights conferred under this assignment shall not be construed to make Secured Party a lender-in-possession of the Facilities so long as, and to the extent, Secured Party, or an authorized agent of Secured Party, has not entered into actual possession of the Facilities. The acceptance by Secured Party of the assignment of the Leases shall not at any time or in any event obligate Secured Party to take any action under this ~~Security~~ Agreement or to expend any money or to incur any expenses. Secured Party shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Facilities unless Secured Party is a lender-in-possession. Prior to Secured Party's actual entry into and taking possession of the Facilities, Secured Party shall not (1) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (2) be obligated to appear in or defend any action or proceeding relating to the Lease or the Facilities; or (3) be responsible for the operation, control, care, management or repair of the Facilities or any portion of the Facilities. The execution of this ~~Security~~ Agreement by ~~Master Tenant Debtor~~ shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Facilities is and shall be that of ~~Master Tenant Debtor~~, prior to such actual entry and taking of possession.

(d) Upon delivery of Notice by Secured Party to ~~Master Tenant Debtor~~ of Secured Party's exercise of Secured Party's rights under this assignment at any time after the occurrence of an Event of Default, and without the necessity of Secured Party entering upon and taking and maintaining control of the Facilities directly, by a receiver, or by any other manner or proceeding permitted by the laws of the applicable jurisdiction, Secured Party immediately shall

have all rights, powers and authority granted to ~~Master Tenant~~Debtor under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

### 3. REPRESENTATIONS; GENERAL COVENANTS.

(a) To induce the Secured Party to make the Loan, the ~~Master Tenant~~Debtor promises to the Secured Party that the following statements are, and will continue throughout the term of this Agreement to be, true: (i) the security interest granted to the Secured Party in the Collateral constitutes a valid, first priority security interest; (ii) the ~~Master Tenant~~Debtor has good title to, and is the sole and lawful owner of, the Collateral; (iii) the ~~Master Tenant~~Debtor has full power and authority to enter into and perform its obligations under this Agreement; (iv) rights granted to the Borrower under the Master Lease, if any, which are subordinate to the liens in favor of the Secured Party ("Subordinate Master Lease Rights") and taxes that are not yet due and payable, the Collateral is free and clear of any lien, security interest, claim, interest, pledge, assignment or other encumbrance (a "Lien"); (v) the ~~Master Tenant~~Debtor keeps all tangible Collateral at the Healthcare Facility; (vi) all trade names, assumed names, fictitious names and other names used by the ~~Master Tenant~~duringDebtor during the five year period preceding the date of this Agreement are set forth on Exhibit C, and the ~~Master Tenant~~Debtor has not, during the preceding five year period, except as may be set forth on Exhibit C, acquired any of its assets in any bulk transfer; (vii) ~~Master Tenant's chief executive office is Debtor's location (as set forth defined in Article 9 of the first paragraph of this Agreement; (viii) Master Tenant's jurisdiction of organization is Uniform Commercial Code as set forth now enacted in the first paragraph of this Agreement; (ix) Master Tenant's State or as hereafter amended or superseded (the "UCC")) is \_\_\_\_\_;~~<sup>5</sup> (viii) Debtor's exact legal name is as set forth in the first paragraph of this Agreement; ~~(x) Master Tenant's~~(ix) Debtor's organizational number (if any) as assigned by the State in which ~~Master Tenant~~Debtor is organized is the number identified as ~~Master Tenant's~~Debtor's organizational ID # on the financing statement(s) filed in connection with the closing of the Loan, and ~~(xi)~~ except as may be set forth on Exhibit C, the ~~Master Tenant~~Debtor has no rights, titles or interests in, or with respect to, any investment property, any letters of credit, any electronic chattel paper, any commercial tort claims, any instruments, including promissory notes, or any deposit accounts.

(b) The ~~Master Tenant~~Debtor will not grant, create or permit to exist any Lien on any of the Collateral except for the Liens in favor of the Secured Party and Subordinate Master Lease Rights. The ~~Master Tenant~~Debtor, at the Secured Party's request, will defend the Collateral against the claims and demands of any individual, unincorporated association, partnership, joint venture, trust, business trust, corporation, limited liability company, institution, entity or any governmental authority ("Persons") at any time claiming any interest in the Collateral.

<sup>5</sup> COMMENT – Under the Revised Article 9, Secured Parties must file a UCC-1 financing statement in the Secretary of State's office in the State of the Debtor's "location." That is a defined term under the UCC and may differ from the Debtor's chief executive office. Therefore, knowing the Debtor's UCC "location" is what is needed, not its chief executive's office location.

(c) The Collateral will only be used by the ~~Master TenantDebtor~~ in the operation of the Project. Until an Event of Default (as defined below) occurs, the ~~Master TenantDebtor~~ may have possession of the Collateral and use it in any lawful manner not inconsistent with the Loan Documents and any policy of insurance thereon. The ~~Master TenantDebtor~~ will not sell, assign, lease, or otherwise dispose of any of the Collateral without the prior written consent of the Secured Party; however, the ~~Master TenantDebtor~~ will have the right, without the Secured Party's consent, to transfer, sell or dispose of any Collateral ~~which is (i) tangible personal property and (ii) obsolete or worn out ("Consumed Property") if the Master Tenant, concurrently with such transfer, sale or disposition, replaces the Consumed Property with replacement personal property which is free and clear of any Liens except for the Liens in favor of the Secured Party and Subordinate Master Lease Rights and has the same or greater value and utility as the Consumed Property originally had (any such replacement personal property will automatically become a part of the Collateral under this Agreement) in the ordinary course of business.~~<sup>6</sup> The Secured Party's interests in the proceeds of the Collateral (or notification of its interests in the proceeds of the Collateral in financing statements or otherwise) will not be construed as modifying this Agreement or as the Secured Party's consent to the disposition of any Collateral other than as provided in this Agreement.

(d) All tangible Collateral is to be located at the Healthcare Facility ~~("Collateral Location")~~,<sup>7</sup> and no tangible Collateral may be removed therefrom without the prior consent of the Secured Party unless the Collateral is (i) Consumed Property under the terms of Section 2(c) above or (ii) being removed in accordance with the terms of Section 2(e) below. Immediately on demand therefor by the Secured Party, the ~~Master TenantDebtor~~ will deliver to the Secured Party any and all evidences of ownership of the Collateral (including certificates of title and applications for title). ~~The Master Tenant will give the Secured Party not less than 30 days prior written notice of any change of (A) Master Tenant's corporate, partnership, doing business, trade or legal name or (B) any Collateral Location.~~<sup>8</sup>

(e) The ~~Master TenantDebtor~~ will, at its own cost and expense, maintain all of the tangible Collateral and the Project in good working condition and make all necessary renewals, repairs, replacements, additions, betterments and improvements thereto, and, in this connection, the ~~Master TenantDebtor~~ may temporarily remove the same, or any part thereof, from the Project if such removal is necessary or advisable in connection with the ~~Master Tenant's Debtor's~~ fulfilling of its obligations under this Section 2(e) and does not affect the priority of the security interest created hereby.

<sup>6</sup> COMMENT – HUD's requirement as to replacement is unnecessary. We have suggested a change to clarify that the Debtor must maintain the Project, in addition to the Collateral. Therefore, if Collateral is disposed in the ordinary course of business, the Debtor would have an obligation to replace it if needed to maintain the Project. HUD's blanket requirement that any piece of collateral that is disposed must be replaced with a like item of the same or greater value impedes an operator's ability to change with the times. Because of the constant changes in technology, Operators should be given the flexibility to discard items and replace them only if necessary. For example, if fax machines are no longer needed in the future, why would HUD mandate that all facilities maintain a fax machine merely b/c they had one when the FHA loan was closed?

<sup>7</sup> COMMENT -The introduction of a new term (i.e. Collateral Location) that is used just once is unnecessary.

<sup>8</sup> COMMENT – We believe the deleted sentence is more appropriate in Section 2(g).



(f) The ~~Master TenantDebtor~~ will cause the Operator to operate the Healthcare Facility in accordance with, and in all other ways comply with, the Operator's Regulatory Agreement, Master Tenant's Regulatory Agreement and Program Obligations (as such term is defined in the Loan Documents). In addition and without limiting the generality of the foregoing, the ~~Master TenantDebtor~~ will deliver to Secured Party copies of all reports, financial statements and other information which the ~~Master TenantDebtor~~ is obligated to provide to HUD pursuant to the Master Tenant's Regulatory Agreement or otherwise pursuant to the Loan Documents or Program Obligations, not later than the earlier of (i) the delivery of such reports, financial statements and other information to HUD or (ii) ten (10) days after Secured Party makes such request.

(g) ~~The Master Tenant will Prior to the Debtor changing its name, it shall provide to Security Party, not change (i) without less than thirty (30) days prior the effective date of any name change (i) notice to the Secured Party, the location of its chief executive office or (ii) of such name change, and (ii) a file-stamped copy of a UCC-3 Financing Statement that properly effects the name change, which UCC-3 financing statement must be filed in all appropriate filing offices and any other offices where a UCC-1 Financing Statement was filed in connection with the closing of the Loan. Additionally, the Debtor shall not, without the prior written consent of Secured Party, which shall not be unreasonably withheld, its jurisdiction of organization, change its "location" as such term is defined in the UCC.~~<sup>9</sup>

(h) The ~~Master TenantDebtor~~ will not merge or consolidate with or into any other Person without the prior written consent of Secured Party.

(i) The ~~Master TenantDebtor~~ will not establish any deposit ~~account~~accounts (as such term is defined in the UCC) unless (i) with respect to any proposed deposit account (other than those set forth on Exhibit C) at least thirty (30) days prior written notice of the name and address of the depository bank, the type of account and any other information reasonably requested by the Secured Party is provided to Secured Party and (ii) contemporaneously therewith, if requested by the Secured Party consistent with the ~~Master Tenant's Debtor's~~ obligations under Section 14, a control agreement in form and substance acceptable to the Secured Party is entered into among the ~~Master TenantDebtor~~, the Secured Party and the depository bank where the deposit account would be maintained. Upon the Secured Party's request (which request need be made only once and not on a recurring basis), the ~~Master TenantDebtor~~ will take all reasonable steps to cause each of the ~~Master Tenant's Debtor's~~ depository banks to provide to the Secured Party, (A) whether by Internet access or otherwise, on-line screen access to daily activity in the ~~Master Tenant's Debtor's~~ deposit accounts, and (B) a copy of each periodic account statement relating to the ~~Master Tenant's Debtor's~~ deposit accounts ordinarily furnished by the depository bank to the ~~Master TenantDebtor~~. The ~~Master TenantDebtor~~ authorizes and approves of the Secured Party communicating directly with each depository bank that maintains a deposit account for the ~~Master TenantDebtor~~. The ~~Master~~

<sup>9</sup> COMMENT – The suggested changes are intended to better enable the Lender/Secured Party to maintain its perfection in the Collateral. If HUD is willing to allow Debtor's to change their names with merely 30 days notice, then the Lenders request that HUD mandate that the Debtors file the appropriate UCC amendments so that any delays in receiving notices or processing them will not jeopardize the financing statement filings made at initial endorsement.



~~TenantDebtor~~ will maintain one or more separate deposit account(s) into which only Government Payments are deposited (collectively, the "Government Accounts"), and the ~~Master TenantDebtor~~ will not commingle in any Government Account proceeds of accounts from non-governmental authorities with proceeds of accounts owing from governmental authorities, including Government Payments. The ~~Master TenantDebtor~~ shall cause all Government Payments to be paid directly into the Government Accounts. Prior to allowing any Government Account to be established, the ~~Master TenantDebtor~~ shall cause a deposit account instruction services agreement in form and substance acceptable to the Secured Party to be entered into with respect to each Government Account by and among the Operator, or ~~Master TenantDebtor~~, if applicable, the Secured Party and the depository bank that maintains such Government Account (each, a "DAISA") to initiate a funds transfer each business day, unless the Secured Party approves otherwise, of all available funds in the applicable Government Account to a non-Government Account of the Operator or ~~Master TenantDebtor~~ that is then subject to a control agreement among the account holder, the Secured Party and the depository bank. Not less than thirty (30) days prior to the effective date thereof, the ~~Master TenantDebtor~~ will provide or cause to be provided to the Secured Party a copy of (1) any change to any DAISA, or (2) any new directions with respect to a Government Account issued to a depository bank maintaining such Government Account, in each case no later than providing the change or directions to the depository bank. Without limiting the generality of the foregoing, without the prior written consent of the Secured Party, neither a change to any DAISA nor any new directions shall instruct a depository bank to transfer funds from the Government Account to a deposit account that is not then subject to a control agreement among the ~~Master TenantDebtor~~, the Secured Party and the depository bank that maintains such deposit account. Any change to or termination of any DAISA and any new directions must be approved by the Secured Party. Failure to comply with any of the provisions of this Section 2(i) shall constitute an "Event of Default." Unless a default exists under this Agreement or any other Loan Document, the Secured Party will not provide notice to the depository bank that is party to a control agreement that Secured Party is exercising rights of control in the ~~Master Tenant's Debtor's~~ deposit accounts. As used herein, "Government Payment" means a payment from a governmental entity and shall include, without limitation, payments governed under the Social Security Act (42 U.S.C. §§ 1395 et seq.), including payments under Medicare, Medicaid and TRICARE/CHAMPUS, and payments administered or regulated by the Centers for Medicare and Medicaid Services of Department of Health and Human Services.

**4. COMPLIANCE WITH LAWS.** The ~~Master TenantDebtor~~ will comply with the requirements of all valid and applicable federal, state and local laws.

**5. TAXES; EXPENSES.** The ~~Master TenantDebtor~~ will pay, when due, all taxes, assessments and other charges lawfully and validly levied or assessed on the Collateral or any part thereof, if applicable. The ~~Master TenantDebtor~~ will pay and, as applicable, reimburse the Secured Party for (i) any and all fees, costs and expenses, of whatever kind and nature, including the fees, expenses and disbursements of the Secured Party's counsel (including but not limited to fees, expenses and disbursements for preparation of documents, making title examinations and rendering opinion letters) which the Secured Party may incur in connection with filing any financing statements or other public notices to protect its interests hereunder, the enforcement, preservation, foreclosure, and/or protection of the Secured Party's rights and/or remedies under the Loan Documents, whether incurred through judicial proceedings or otherwise, or in

defending or prosecuting any actions or proceedings arising out of or relating to the Loan, and (ii) all filing and recording fees and taxes payable in connection with the transactions contemplated by the Loan Documents. All amounts payable by ~~Master-TenantDebtor~~ to Secured Party under this Section 4 will be paid by the ~~Master-TenantDebtor~~ upon the Secured Party's demand therefor.

**6. INSPECTION; NOTICES.** Subject to resident privacy rights, the Secured Party, or its agents, may enter ~~on~~ the Project and ~~any other Collateral Location/or the Healthcare Facility~~ at any time during normal business hours, and from time to time, for the purpose of inspecting the Project and/or the Collateral and making copies or abstracts of all of the ~~Master Tenant'sDebtor's~~ records pertaining to the Collateral. The ~~Master-TenantDebtor~~ will keep, or cause to be kept, accurate and complete records of the Collateral. The ~~Master-TenantDebtor~~ will give the Secured Party prompt notice of any new facts which, under the applicable provisions of law, would affect the priority of the security interest granted to the Secured Party herein and of any Event of Default.

**7. INSURANCE.** To the extent required by Program Obligations, the ~~Master TenantDebtor~~ will purchase and maintain insurance at all times with respect to all tangible Collateral against risks of fire (including so-called extended coverage), theft, vandalism and such other risks as the Secured Party may require, in such form, for such periods and written by such companies as may be satisfactory to the Secured Party, such insurance to be payable to the Secured Party as its interests may appear. The ~~Master-TenantDebtor~~ will purchase and maintain, or caused to be purchased and maintained, at all times liability insurance and business interruption insurance in such amounts and issued by such companies as may be required from time to time by the Secured Party. All policies of insurance will provide for thirty (30) days advance written notice to the Secured Party of cancellation or any material change in coverages of such insurance. The ~~Master-TenantDebtor~~ will furnish, or cause to be furnished to, the Secured Party with certificates or other evidence satisfactory to the Secured Party of compliance with the foregoing insurance provisions.

**8. DISCHARGE OF LIENS.** At its option but without any obligation to do so, the Secured Party may (a) discharge any taxes or other Liens at any time levied or placed on the Collateral, (b) pay for insurance on the Collateral, and/or (c) pay for the maintenance and preservation of the Collateral. The ~~Master-TenantDebtor~~ will reimburse the Secured Party on its demand for any payment made, or any expense incurred, by the Secured Party pursuant to this Section 7. All of the foregoing sums paid or advanced by the Secured Party will constitute part of the Obligations and will be secured by the Collateral.

**9. EVENTS OF DEFAULT.** Each of the following events or circumstances, whether or not caused by or within the control of the ~~Master-TenantDebtor~~, will be an "Event of Default" under this Agreement:

(a) The ~~Master-TenantDebtor~~ does not pay when due any of the Obligations, subject to any grace period provided under the Loan Documents or Master Lease ;

(b) The ~~Master-TenantDebtor~~ does not observe, perform or comply with any of the terms or conditions of this Agreement;

(c) A default or breach of any of the Loan Documents (exclusive of this Agreement which is covered by the other subsections of this Section 8) has occurred, which default or breach is not cured within any applicable grace period; however, defaults or breaches of ~~the Borrower that certain Healthcare~~ Regulatory Agreement, ~~Borrower between HUD and Borrower~~ (the "Borrower's Regulatory Agreement"), the Operator's Regulatory Agreement, or the Master Tenant's Regulatory Agreement may only be treated as defaults under this ~~Security~~ Agreement if HUD consents to such treatment or requests Secured Party to treat them as such;

(d) Any warranty, representation or statement made or furnished to the Secured Party by, or on behalf of, the ~~Master TenantDebtor~~ proves to have been false in any material respect when made or furnished or when treated as being made or furnished to the Secured Party;

(e) The Secured Party does not have, for any reason, a perfected, first priority security interest in all of the Collateral;

(f) There occurs any actual or threatened demolition of or injury or waste to the Project premises, not covered by insurance, or ~~that Debtor does not, or does not cause to be,~~ replaced or restored by the Operator, ~~Master Tenant,~~ or the Borrower, which may materially impair the value of the Collateral or the Project<sup>10</sup>;

(g) Filing by or against the ~~Master TenantDebtor~~ of a petition in bankruptcy, for a reorganization, arrangement or debt adjustment, or for a receiver, trustee, or similar creditors' representative for ~~Master Tenant's Debtor's~~ property or any part thereof, or of any other proceeding under any federal or state insolvency or similar law (and if such petition or proceeding is an involuntary petition or proceeding filed against the ~~Master TenantDebtor~~ without its acquiescence therein or thereto at any time, the same is not promptly contested and, within 60 days of the filing of such involuntary petition or proceeding, dismissed or discharged), or the making of any general assignment by the ~~Master TenantDebtor~~ for the benefit of creditors, or the ~~Master TenantDebtor~~ dissolves or is the subject of any dissolution, winding up or liquidation;

(h) The ~~Master TenantDebtor~~ is dissolved and liquidation of the ~~Master TenantDebtor~~ is commenced in accordance with the ~~Master Tenant's Debtor's~~ organizational documents and/or the law of the jurisdiction of organization; or

(i) The ~~Master TenantDebtor~~ changes its name or the jurisdiction in which it is ~~organized~~ located (as that term is defined in the UCC) or merges or consolidates with or into another Person without the prior written consent of the Secured Party.

## 10. REMEDIES ON DEFAULT.

<sup>10</sup> ~~COMMENT – Because the Debtor is the signatory to this Agreement, the obligations hereunder should be those of the Debtor. If HUD intends to make other parties liable for any specific obligation, that provision should be included in an agreement with that specific party. For example, if the Borrower has an obligation to replace a damaged item of collateral, then the Borrower must be so obligated in the Borrower's Security Agreement rather than the Master Tenant Security Agreement.~~

(a) If an Event of Default occurs, the Secured Party shall deliver to ~~Master TenantDebtor~~ written Notice, as defined in the Security Instrument and otherwise provided for in paragraph 16, of the Event of Default, in order to provide ~~Master TenantDebtor~~ an opportunity to cure, or cause to be cured, the Event of Default. The foregoing notwithstanding, if the Event of Default is a default pursuant to another document, Secured Party shall not treat such default as an Event of Default pursuant to this Agreement prior to the expiration of the applicable notice and cure periods pursuant to such other document, and shall give timely notice to ~~Master TenantDebtor~~ that such default constitutes an Event of Default pursuant to this Agreement, but shall not be required to provide additional cure periods or rights. Upon ~~Master Tenant's Debtor's~~ failure to cure, or cause to be cured, the Event of Default within the applicable time period specified in the Notice, the Secured Party may then, or at any time after the failure to cure the Event of Default, (A) declare all Obligations immediately due and payable, and whereupon the Obligations will be due and payable automatically and immediately, without notice or demand, which the ~~Master TenantDebtor~~ expressly waives, and proceed to enforce payment of the Obligations; (B) exercise all of the rights and remedies afforded to the Secured Party (i) pursuant to the terms of this Agreement and/or any of the other Loan Documents, (ii) under the UCC (as defined in Section 12 below), and/or (iii) by law and/or in equity (subject, however, to any limitations imposed by applicable law with respect to Healthcare Assets); (C) collect and receive the proceeds of all Awards (as defined in Exhibit B), the rights of ~~Master TenantDebtor~~ thereto and shares of ~~Master TenantDebtor~~ therein being hereby assigned to the Secured Party, and give proper receipts and acquittances therefor and apply, at its option, the net proceeds thereof, after deducting expenses of collection, as a credit upon any portion, as selected by the Secured Party, of the Obligations; (D) require the ~~Master TenantDebtor~~ to assemble the Collateral and make it available to the Secured Party at a place to be designated by the Secured Party which is reasonably convenient to both parties, and (E) without limiting the provisions of Section 1(b), apply (or instruct another Person to apply) to the Obligations the balance of any deposit account that is part of the Collateral.

(b) Without limitation of those rights and remedies, the Secured Party may, upon written notice to the ~~Master TenantDebtor~~, take, and publicly or privately sell or convey, full right, title and interest in and to the Collateral, or any part of it, in the name of the Secured Party and/or its designees. Subject to the terms of this Agreement the ~~Master TenantDebtor~~ hereby constitutes and appoints the Secured Party as its true and lawful attorney in fact to assign and transfer its interest in any or all of the Collateral if an Event of Default occurs.

(c) If any notice is required by law for the Secured Party to make a sale or other disposition of the Collateral, the Secured Party and the ~~Master TenantDebtor~~ agree that notice will not be unreasonable as to time if given in compliance with this Agreement ten (10) days before any sale or other disposition of the Collateral. All reasonable attorneys' and paralegal fees and other legal expenses incurred by the Secured Party to collect the Obligations, to retake, hold, prepare for sale, and to dispose of the Collateral will be (i) payable to the Secured Party on its demand for payment, (ii) part of the Obligations, and (iii) secured by the Collateral.

(d) The ~~Master TenantDebtor~~ further specifically agrees that, in any exercise of the rights of the Secured Party under this Agreement or under any other Loan Document, (i) any combination of the Collateral and/or any other security for the Obligations may be offered for sale and (ii) all of the Collateral and/or any other security for the Obligations may be sold for

one total price, and the proceeds of any such sale accounted for in one account without distinction among the items of security or without assigning to them any proportion of such proceeds, the ~~Master-TenantDebtor~~ hereby waiving the application of any doctrine of marshaling.

(e) The ~~Master-TenantDebtor~~ shall cooperate, and shall cause the Operator to cooperate, in any legal and lawful manner necessary or required, to permit the Secured Party or its successors and assigns to continue to operate and maintain the Healthcare Facility as ~~a [nursing home // assisted living facility] in Master-Tenant's~~ an Approved Use (as defined in the Borrower's Regulatory Agreement)<sup>11</sup> in Debtor's or Operator's name, place and stead. For this purpose, and to the extent not prohibited by applicable law with respect to Healthcare Assets, ~~Master-TenantDebtor~~ irrevocably appoints the Secured Party, its successors and assigns, as ~~Master-Tenant'sDebtor's~~ true and lawful attorney-in-fact, to do all things necessary or required by the state in which the Project is located or any other government entity with jurisdiction over the Project, including, but not limited to, the provision of any and all information and data, the payment of fees and other charges, and the execution of documents, all in the name of the ~~Master-TenantDebtor~~. This power is coupled with an interest.

#### 11. NO WAIVER BY SECURED PARTY; CUMULATIVE RIGHTS.

(a) No waiver by the Secured Party of any Event of Default or default under this Agreement or any of the other Loan Documents will be effective unless such waiver is in writing and signed by duly authorized representatives of the Secured Party. No waiver by the Secured Party of any Event of Default or default under this Agreement or any of the other Loan Documents will operate as a waiver of any other Event of Default or default or of the same Event of Default or default on a future occasion. The Secured Party may delay in exercising or omit to exercise any right or remedy under this Agreement, any other Loan Document or by law or equity provided without waiving that or any past, present or future right or remedy. All rights and remedies of the Secured Party in this Agreement and the other Loan Documents will be cumulative, and none of these rights or remedies will be exclusive of any other right or remedy allowed at law or in equity or in any other Loan Document, and all of these rights and remedies may be exercised and enforced concurrently.

(b) Neither the ~~Master-TenantDebtor~~ nor any other Persons interested in the Collateral or the proceeds of the Collateral shall have any right to require the Secured Party first to resort to or proceed personally against any other Person or to proceed against any other collateral security, or to give priority or preference to any item of Collateral, or to proceed upon any guaranty, prior to exercising its rights hereunder. No renewal or extension of the Loan, no release or surrender of the Collateral and/or any other security for the Obligations, no release of any obligor with respect to the Obligations, and no delay by the Secured Party in enforcing the Obligations or exercising any right or power with respect to the Obligations shall affect the Secured Party's rights with respect to the Collateral.

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<sup>11</sup> COMMENT – In order to avoid possible inconsistencies among documents as to how the property may be used, we suggest using the defined term “Approved Use” from the Borrower Regulatory Agreement. That term will be approved by HUD and will provide consistency through the loan documents.

**12. BINDING EFFECT.** All rights and remedies of the Secured Party under this Agreement will inure to the benefit of the Secured Party's successors and assigns; and all agreements, obligations, and duties of the ~~Master-TenantDebtor~~ will bind its heirs, personal representatives and permitted successors and assigns; however, the ~~Master-TenantDebtor~~ may not assign this Agreement or any of its rights under this Agreement or delegate any of its duties or obligations under this Agreement without the consent of the Secured Party.

**13. GOVERNING LAW; CONSTRUCTION; WAIVER OF TRIAL BY JURY.**

(a) This Agreement and all rights and obligations under this Agreement, including matters of construction, validity and performance, will be governed by the laws of the State of *[enter property or organizational jurisdiction]* in which the Healthcare Facility is located (the "State"). If any term of this Agreement is found to be invalid by a court with jurisdiction under the laws of the State or laws of mandatory application, then the invalid term will be considered excluded from this Agreement and will not invalidate the remaining terms of this Agreement. All uncapitalized terms used herein which are now or hereafter defined in the ~~Uniform Commercial Code, as now enacted in the State or as hereafter amended or superseded (the "UCC")~~<sup>12</sup>, will have the same meaning herein as in the UCC unless the context indicates otherwise. Every power given herein is coupled with an interest and is irrevocable by death, dissolution or otherwise. The definition of any document includes all schedules, attachments and exhibits to that document, and all renewals, extensions, supplements, amendments, modifications, restatements and consolidations of that document, and any document given in substitution for or replacement of that document. The term "including" is used by way of example only and not by way of limitation, and the singular includes the plural and conversely. The captions or headings contained in this Agreement are for reference purposes only and will not affect or relate to the interpretation of this Agreement.

(b) AS A SPECIFICALLY BARGAINED INDUCEMENT FOR THE SECURED PARTY TO ENTER INTO THE AGREEMENT AND EXTEND CREDIT TO BORROWER, SECURED PARTY AND MASTER TENANT EACH HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ANY AND ALL RIGHT(S) TO A TRIAL BY JURY FOR ANY CAUSE OF ACTION, CLAIM OR DEFENSE RELATING TO, RESULTING FROM OR ARISING OUT OF ANY OF THE LOAN AND/OR ANY TRANSACTIONS, RIGHTS AND/OR OBLIGATIONS CONTEMPLATED BY THIS AGREEMENT AND/OR ANY OF THE OTHER LOAN DOCUMENTS. MASTER TENANT FURTHER ACKNOWLEDGES THAT SUCH WAIVER OF THE RIGHT TO A TRIAL BY JURY IS MADE AFTER CONSULTATION WITH COUNSEL.

**14. TERM OF AGREEMENT.** The term of this Agreement will begin on the date of this Agreement and continue in full force and effect and be binding on the ~~Master-TenantDebtor~~ until the date that all of the Obligations are fully and finally paid and satisfied.

**15. PERFECTION; FURTHER ASSURANCES.**

<sup>12</sup> COMMENT – The term has now been defined earlier in the document.

(a) The ~~Master TenantDebtor~~ agrees to comply with all applicable laws and requirements in order to grant to the Secured Party a valid, perfected first Lien on the Collateral. At any time and from time to time, the ~~Master TenantDebtor~~, on request of the Secured Party, will give, execute, file and/or record any notice, financing statement, instrument, document or agreement that the Secured Party may consider necessary or desirable to create, preserve, continue, perfect or validate any security interest or other Lien granted under this Agreement or which the Secured Party may consider necessary or desirable to exercise or enforce its rights under this Agreement. Without limiting the generality of the foregoing, the Secured Party is authorized to file with respect to the Collateral, and the Debtor hereby authenticates such filings, one or more financing statements or other documents without the signature of the ~~Master TenantDebtor~~ and to name therein the ~~Master TenantDebtor~~ as debtor and the Secured Party and/or HUD as secured parties; and correct or complete, or cause to be corrected or completed, any financing statements or other such documents as have been filed naming the ~~Master TenantDebtor~~ as debtor and the Secured Party and/or HUD, as their interests may appear, as secured parties. The ~~Master Tenant~~ Debtor shall pay all filing costs and all costs and expenses of any record searches for financing statements that Secured Party may reasonably require.

(b) The Debtor hereby appoints the Secured Party as its attorney-in-fact and authorizes the Secured Party, acting alone on behalf of the ~~Master TenantDebtor~~, to execute, acknowledge, deliver, file and/or record any and all documents requiring execution by the ~~Master TenantDebtor~~ and necessary or desirable to effectuate or facilitate the purposes of this Agreement and/or the obligations or covenants of the ~~Master TenantDebtor~~ under this Agreement. The power of attorney granted hereby is coupled with an interest and is irrevocable. The Secured Party is also authorized by the ~~Master TenantDebtor~~ to give notice to any Person that the Secured Party may consider necessary or desirable under applicable law to preserve, perfect or protect the Secured Party's and or HUD's interests in the Collateral.

15.(c) Without limiting the generality of the foregoing, with respect to any of the Collateral for which control of such Collateral is a method of perfection under the UCC, including all of the ~~Master Tenant's Debtor's~~ rights, titles and interests in deposit accounts, investment property, electronic chattel paper and letter-of-credit rights, the ~~Master Tenant will, on Secured Party's request, cause to be executed by each Person that the Secured Party determines is appropriate, a control agreement in a form acceptable to the Secured Party. Debtor shall, on Secured Party's request, enter into an agreement (a "Control Agreement" or "DACA"), in a form acceptable to the Secured Party and HUD, that grants control (as that term is defined in Article 9 of the UCC) over each deposit account of Debtor's that is included in the Collateral. Further, Debtor covenants that it shall obtain a control agreement over any new deposit account it obtains, unless Secured Party or HUD permits otherwise. Debtor also covenants that it shall not terminate any Control Agreement without the prior written consent of HUD and Secured Party. In the event that Debtor receives notice that the control agreement is to be and/or has been terminated by the depository institution that is a party to such Control Agreement, the Debtor shall promptly make alternative arrangements to establish a new Control Agreement with the~~

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prior written consent of the Secured Party, and shall direct future receivables to be paid into the deposit account(s) specified in such new control agreement.<sup>13</sup>

(d) If Debtor takes any action that negates, invalidates, or otherwise adversely impacts the effectiveness of the financing statements filed pursuant to this Section, except for such actions permitted in this Agreement, Debtor shall immediately notify Secured Party of such action and cooperate with Secured Party to the extent needed to file any amendments or additional financing statements.

**16. INTEREST.** Any amounts payable by the ~~Master Tenant~~Debtor under this Agreement will bear interest at the triple (or the highest rate allowed by the laws of the State)<sup>14</sup> rate of interest provided in the Note from the date on which such amounts are payable under this Agreement until the date on which such payments are made by the ~~Master Tenant~~Debtor to the Secured Party; however, nothing in this Agreement will be deemed to give to the ~~Master Tenant~~Debtor the right to withhold payment in consideration of the payment of such interest.

**17. DELIVERY OF NOTICES.** All notices must be in writing and sent (a) in person, (b) by certified or registered mail or (c) by overnight delivery carrier for next day delivery in each case to the address listed in the opening paragraph of this Agreement (or if notice of a new address is given in accordance with this Agreement, the new address). Notice given in any other manner will not be considered delivered or given unless and until actually received. A notice period will start (i) if mailed, three business days after notice was sent by certified or registered mail, (ii) the next business day after being sent by overnight delivery, and (iii) the day the notice was delivered in person.

**18. REVIVAL OF SECURITY INTEREST.** If the ~~Master Tenant~~Debtor makes a payment or payments to the Secured Party (or the Secured Party receives any payment or proceeds of the Collateral) that are subsequently voided, avoided, set aside, annulled, or disregarded under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of the payment or proceeds received, the Obligations or part intended to be satisfied will be revived and will continue in full force and effect as if these payment(s) or proceeds had not been received by the Secured Party, and the security interest granted herein shall be enforceable as to such Obligations as fully as if such payments had never been made.

## **19. CLAIMS AGAINST SECURED PARTY.**

<sup>13</sup> COMMENT - The suggested additions are intended to strengthen the requirements on obtaining a control agreement and providing Lender with protections that such control agreements may not be terminated. We believe many banks may object to having these controls in the actual control agreement so we are proposing to build these protections into the Security Agreement. However, we believe that as a general matter, a control agreement is not needed at the Master Tenant level if they are obtained at the Subtenant level. Those comments are reflected in our mark up of the Master Tenant Regulatory Agreement.

<sup>14</sup> COMMENT - The Lender should not be forced to extend to the Debtor additional loans at what could be below market rates. An advances made by the Lender must be done under circumstances where there is incentive to quickly pay back the lender. If market rates rise above the interest rate in the Note, Debtor's may have an incentive to cause the Lender to make advances, which it can pay back at a lower interest rate than it would be able to obtain in the current market place.

(a) Notification. The Secured Party shall not be in default under this Agreement, or under any of the other Loan Documents, unless a written notice specifically setting forth the claim of the ~~Master TenantDebtor~~ shall have been given to Secured Party within one hundred eighty (180) days after the occurrence of the event which the ~~Master TenantDebtor~~ alleges gave rise to such claim and the Secured Party does not remedy or cure the default, if any, with reasonable promptness thereafter.

(b) Remedies. If it is determined by the final, non-appealable order of a court of competent jurisdiction that the Secured Party has breached any of its obligations under the Loan Documents and has not remedied or cured same with reasonable promptness following receipt of notice thereof, the Secured Party's responsibilities shall be limited to the following: (i) where the breach consists of the failure to grant consent or give approval in violation of the terms and requirements of any of the Loan Documents, the obligation to grant such consent or give such approval; and (ii) where the breach involves any other violation of the Loan Documents, or where the Secured Party is determined to have acted in bad faith, the payment of any actual, direct, compensatory damages sustained by the ~~Master TenantDebtor~~ as a result thereof.

(c) Limitations. In no event, however, shall the Secured Party be liable to the ~~Master TenantDebtor~~, or to any other party claiming through the ~~Master TenantDebtor~~, for any other damages, including, without limitation, indirect, speculative, or punitive damages, whatever the nature of the breach by the Secured Party of its obligations under any of the Loan Documents. In no event shall the Secured Party be liable to the ~~Master TenantDebtor~~, or to any other party claiming through the ~~Master TenantDebtor~~, unless a written notice specifically setting forth the nature of the claim shall have been given to the Secured Party within the time period specified above.

## 20. WAIVERS.

(a) No act or thing need occur to establish the liability of the ~~Master TenantDebtor~~ hereunder, and no act or thing, except full payment and discharge of all of the Obligations, shall in any way exonerate the ~~Master TenantDebtor~~ or modify, reduce, limit or release the liability of the ~~Master TenantDebtor~~ hereunder.

(b) The ~~Master TenantDebtor~~ will not exercise or enforce any right of contribution, reimbursement, recourse or subrogation available to the ~~Master TenantDebtor~~ against any Person liable for payment of the Obligations, or as to any collateral security therefor, unless and until all of the Obligations shall have been fully paid and discharged.

(c) Whether or not any existing relationship between the ~~Master TenantDebtor~~ and the Borrower has been changed or ended and whether or not this Agreement has been terminated, the Secured Party may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Obligations without any consent or approval by the ~~Master TenantDebtor~~ and without any notice to the ~~Master TenantDebtor~~. The liability of the ~~Master TenantDebtor~~ shall not be affected or impaired by any of the following acts or things (which the Secured Party is expressly authorized to do, omit or suffer from time to time, both before and after termination of this Agreement, without notice to or consent or approval by the ~~Master TenantDebtor~~): (i) any acceptance of collateral security, guarantors, accommodation parties or

sureties for any or all Obligations; (ii) any one or more extensions or renewals of Obligations (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Obligations; (iii) any waiver or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Obligations, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Obligations; (iv) any full or partial release of, settlement with, or agreement not to sue Borrower or any other Person liable in respect of any Obligations; (v) any discharge of any evidence of Obligations or the acceptance of any instrument in renewal thereof of substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Obligations, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any modification, substitution, discharge, impairment, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Obligations or any evidence thereof; (ix) any order of application of any payments of credits upon Obligations; or (x) any election by Secured Party under §1111(b)(2) of the United States Bankruptcy Code.

(d) The ~~Master-TenantDebtor~~ waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Obligations, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the ~~Master-TenantDebtor~~ will not assert, plead or enforce against Secured Party any defense of waiver, release, discharge in bankruptcy, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other Person liable in respect of any indebtedness, or any setoff available against Secured Party to Borrower or any such other Person, whether or not on account of a related transaction. The ~~Master-TenantDebtor~~ expressly agrees that the ~~Master-TenantDebtor~~ shall be and remain liable, to the extent of the Collateral, for any deficiency remaining after foreclosure of any security interest securing the Obligations, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision.

(e) The ~~Master-TenantDebtor~~ waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing the Obligations. To the extent of the Collateral, this Agreement constitutes an absolute, unlimited, unconditional and continuing guaranty of payment, not collection. The Secured Party shall not be required first to resort for payment of the Obligations to Borrower, or any other Persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Obligations, before enforcing this Agreement.

(f) The liability of the ~~Master-TenantDebtor~~ under this Agreement is in addition to and shall be cumulative with all other liabilities of the ~~Master-TenantDebtor~~ to Secured Party as obligor or otherwise, without any limitation as to amount, and all other liabilities of any other Person who guarantees all or any portion of the Obligations, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

(g) This Agreement shall be effective upon delivery to Secured Party, without further act, condition or acceptance by Secured Party. Any invalidity or unenforceability of any

provision of application of this Agreement shall not affect other lawful provisions and application hereof, and to this end the provisions of this Agreement are declared to be severable.

(h) ~~Master-TenantDebtor~~ hereby covenants that this Agreement will not be discharged except by complete performance of the obligations contained in this Agreement. ~~Master-TenantDebtor~~ waives all setoffs and counterclaims and all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of, and reliance on, this Agreement. ~~Master-TenantDebtor~~ further waives all (i) notices of the existence, creation or incurring of new or additional indebtedness, arising either from additional loans extended to ~~Master-TenantDebtor~~ or Borrower, or otherwise, (ii) notices that the principal amount, or any portion thereof (and any interest thereon), of the Loan or any of the other Obligations is due, (iii) notices of any and all proceedings to collect from ~~Master-TenantDebtor~~ and/or Borrower of all or any part of the Obligations, or from anyone else, (iv), to the extent permitted by law, notices of exchange, sale, surrender or other handling of any security or collateral given to Secured Party to secure payment of all or any part of the Obligations, and (v) defenses based on suretyship or impairment of collateral.

## 21. MISCELLANEOUS.

(a) This Agreement is intended to be supplemental to and not in substitution or in derogation of any security agreement contained in any other Loan Document.

(b) In any instance where the consent or approval of the Secured Party may be given or is required or any determination is to be rendered by the Secured Party hereunder, the granting, withholding or denial of such consent or approval and the rendering of such determination shall be made or exercised by the Secured Party at its sole and exclusive option.

(c) It is understood and agreed that no judgment or decree which may be entered on any debt secured or intended to be secured by the Mortgage shall operate to abrogate or lessen the effect of this Agreement, but that this Agreement shall continue in full force and effect until the payment and discharge of the Obligations.

(d) This Agreement and the other Loan Documents represent the entire agreement between the Secured Party and the ~~Master-TenantDebtor~~ with respect to the subject matter of this Agreement and supersede all previous agreements, negotiations, and understandings with respect to the subject matter of this Agreement. Neither this Agreement nor any of the other Loan Documents may be amended, altered or changed other than in a writing signed by the Secured Party and the ~~Master-TenantDebtor~~. The ~~Master-Tenant'sDebtor's~~ warranties and representations in this Agreement will be treated as being continuing warranties and representations, made by the ~~Master-TenantDebtor~~ with the same effect as though the representations and warranties had been made again on, and as of, each day of the term of this Agreement.

(e) This Agreement may be executed in several counterparts and each counterpart will be considered an original of this Agreement.

## 22. RIGHTS OF HUD.

(a) ~~Master TenantDebtor~~ and Secured Party hereby agree that HUD shall be an additional secured party under this ~~Security~~ Agreement together with Secured Party, as their interests may appear, and that HUD shall be listed on the ~~Uniform Commercial CodeUCC~~ Financing Statements to be filed contemporaneously herewith; provided, however, that nothing herein or in the ~~Uniform Commercial CodeUCC~~ Financing Statements shall require the execution, now or any future time, of any amendment, extension, or other document by HUD.

(b) To the extent any party herein is required or desires to give notice to HUD hereunder, such notice shall be delivered in accordance with the provisions hereof, as follows: U.S. Department of Housing and Urban Development, c/o Office of Healthcare Programs, 451 7th Street S.W., Washington, DC 20410.

**IN WITNESS WHEREOF**, the ~~Master TenantDebtor~~ and the Secured Party have signed this Agreement as of the date in the first paragraph of this Agreement.

**THE MASTER TENANT:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE SECURED PARTY:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A-1 TO MASTER TENANT SECURITY AGREEMENT**

Legal Description of Land for Healthcare Facility

**EXHIBIT A-2 TO MASTER TENANT SECURITY AGREEMENT**

~~Legal Description of Land for Other Facilities~~

<u>Project Name</u>	<u>Street Address</u>	<u>City</u>	<u>County</u>	<u>State</u>	<u>Zip Code</u>	<u>Facility Type</u>

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## **EXHIBIT B TO MASTER TENANT SECURITY AGREEMENT**

All of the following described property and interests in property, whether now in existence or hereafter arising, and relating to, situated or located on or used or usable in connection with the maintenance and/or operation the property described in Exhibit A (hereafter referred to as the "Land"):

(a) All fixtures, furniture, equipment and other goods and tangible personal property of every kind and description whatsoever now or hereafter located on, in or at the Land, including, but not limited to, all lighting, laundry, incinerating and power equipment; all engines, boilers, machines, radiators, motors, furnaces, compressors and transformers; all power generating equipment; all pumps, tanks, ducts, conduits, wire, switches, electrical equipment, and fixtures, fans and switchboards; all telephone equipment; all piping, tubing and plumbing equipment and fixtures; all heating, refrigeration, air-conditioning, cooling, ventilating, sprinkling, water, power, waste disposal and communications equipment, systems and apparatus; all water coolers and water heaters; all fire prevention, alarm and extinguishing systems and apparatus; all cleaning equipment; all lift, elevator and escalator equipment and apparatus; all partitions, shades, blinds, awnings, screens, screen doors, storm doors, exterior and interior signs, gas fixtures, stoves, ovens, refrigerators, garbage disposals, dishwashers, kitchen and laundry fixtures, utensils, appliances and equipment, cabinets, mirrors, mantles, floor coverings, carpets, rugs, draperies and other furnishings and furniture now or hereafter installed or used or usable in the operation of any part of the buildings, structures or improvements erected or to be erected in or upon the Land and every replacement thereof, accession thereto, or substitution therefor, whether or not all of the above are now or hereafter acquired or attached to the Land in any manner;

(b) All articles of tangible personal property not otherwise described herein which are now or hereafter located in, attached to or used in, on or about the buildings, structures or improvements now or hereafter located, placed, erected, constructed or built on the Land and all replacements thereof, accessions thereto, or substitution therefor, whether or not the same are, or will be, attached to such buildings, structures or improvements in any manner;

(c) All rents, leases and guarantees of leases, subleases and guarantees of subleases, income, revenues, issues, profits, royalties and other benefits arising or derived or to be derived from, or related to, directly or indirectly, the Land, whether or not any of the property described in this item (c) constitutes accounts, chattel paper, documents, general intangibles, instruments or money;

(d) All awards now or hereafter made ("Awards") with respect to the Land as a result of (i) the exercise of the power of condemnation or eminent domain, or the police power, (ii) the alteration of the grade of any street, or (iii) any other injury or decrease in the value of the Land (including but not limited to any destruction or decrease in the value by fire or other casualty), whether or not any of the property described in this item (d) constitutes accounts, chattel paper, documents, general intangibles, instruments, investment property, deposit accounts, or money;

(e) All land surveys, plans and specifications, drawings, briefs and other work product and other papers and records now or hereafter used in the construction, reconstruction, alteration, repair or operation of the Land;

(f) All licenses, permits, certificates and agreements for the provision of property or services to or in connection with, or otherwise benefiting, the Land, any nursing home license, assisted living facility license, any and all Medicaid/Medicare Provider Agreements, and any other license necessary for the provision of services at the Land; however, the Secured Party disclaims a security interest in such of the property described in this item (f) to the extent that a security interest in such property may not be granted to the Secured Party without the forfeiture of the rights of the ~~Master-TenantDebtor~~ (or any assignee of the ~~Master-TenantDebtor~~) or a default resulting thereunder-;

(g) All funds, monies, securities and other property held in escrow, lock boxes, depository or blocked accounts or as reserves and all rights to receive (or to have distributed to the ~~Master-TenantDebtor~~) any funds, monies, securities or property held in escrow, lock boxes, depository or blocked accounts or as reserves including but not limited to all of ~~Master Tenant'sDebtor's~~ rights (if any) to any funds or amounts in that certain reserve funds and/or residual receipts accounts created under any regulatory agreement required by the Secretary of Housing and Urban Development or the Federal Housing Administration Commissioner;

(h) All accounts, accounts receivable, general intangibles, chattel paper, instruments-; ~~and any rights to payment evidenced by instrument(s).~~ documents, inventory, goods, cash, ~~cash proceeds,~~ bank accounts, ~~deposit accounts,~~ certificates of deposits, securities, insurance policies, letters of credit, ~~letters of credit rigths,~~ deposits, judgments, liens, causes of action, warranties, guaranties and all other properties and assets of the ~~Master-TenantDebtor~~, tangible or intangible, whether or not similar to the property described in this item (h). As used herein, the term "accounts receivable" shall include (i) all healthcare insurance receivables, including, but not limited to Medicaid and Medicare receivables, Veterans Administration or other governmental receivables, private patient receivables, and HMO 10 receivables; (ii) any payments due or to be made to the ~~Master-TenantDebtor~~ relating to the Land or (iii) all other rights of the ~~Master TenantDebtor~~ to receive payment of any kind with respect to the Land;

(i) All books, records and files of whatever type or nature relating to any or all of the property or interests in property described herein or the proceeds thereof, whether or not written, stored electronically or electromagnetically or in any other form, and whether or not such books, records, or files constitute accounts, equipment or general intangibles-;

(j) Any and all security or other deposits which have not been forfeited by any tenant under any lease; and

(k) All products and proceeds of any and all of the property (and interests in property) described herein including but not limited to proceeds of any insurance, whether or not in the form of original collateral, accounts, contract rights, chattel paper, general intangibles, equipment, fixtures, goods, securities, leases and guarantees of leases, subleases and guarantees of subleases, instruments, inventory, documents, deposit accounts or cash.

**EXHIBIT C TO MASTER TENANT SECURITY AGREEMENT<sup>15</sup>**

**Other Names Used by ~~Master-Tenant~~Debtor in Previous Five Years** (see Section 2(a) of Agreement):

**Assets Acquired in Bulk Transfer in Previous Five Years** (see Section 2(a) of Agreement):

**~~Master-Tenant's~~ Debtor's Rights in the Following** (see Section 2(a) of Agreement):

*Investment property:*

*Letters of Credit:*

*Electronic Chattel Paper:*

*Commercial Tort Claims:*

*Instruments (including promissory notes):*

*Deposit Accounts:*

<u>Account Number</u>	<u>Depository Bank</u>	<u>Account Type</u> (e.g., operating or payroll)	<u>Government Accounts</u> (see note below)
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Note: Designate if deposit account receives deposits of proceeds of accounts from federal, state or local governments (e.g., Medicare and Medicaid), and if so, whether such deposit account is solely for such deposits or whether the deposit account commingles other non-governmental deposits. See Section 2(i) of the Agreement for the ~~Master-Tenant's~~Debtor's obligations in this regard.

<sup>15</sup> **COMMENT** – The information contained in this Exhibit C can be personal and should not be subject to public disclosure. Therefore, HUD should indicate that the Exhibit C is not to be attached to the UCC Financing Statements.

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