**[DRAFTING NOTE: THIS DOCUMENT MUST BE RECORDED IN THE LAND RECORDS OF THE PROPERTY JURISDICTION AND INCLUDED ON SCHEDULE B2 OF THE LENDER’S TITLE POLICY]**

**[DRAFTING NOTE: THIS FORM MAY BE USED FOR UNAFFILIATED MASTER LESSEES THAT OWN A LEASEHOLD INTEREST IN THE MORTGAGED PROPERTY AS A LESSEE OR SUBLESSEE, SUBJECT TO REVIEW OF THE OPERATING LEASE(S) AFFECTING THE MORTGAGED PROPERTY]**

Prepared by, and after recording

return to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS**

**(OPERATING LEASE)**

**(Unaffiliated Master Lessee)**

**[DRAFTING NOTE: MODIFY DOCUMENT AS NECESSARY FOR TRANSACTION STRUCTURE AND APPLICABLE PARTIES]**

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (OPERATING LEASE)**

**(Unaffiliated Master Lessee)**

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (OPERATING LEASE) (this “**Assignment**”) is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, by and among \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ (“**Master Lessee**”), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ (“**Lender**”) **[DRAFTING NOTE - ADD IF THIS SNDA COVERS BOTH AN OPERATING LEASE AND A SUBLEASE: [**, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ (“**Sublessee**”)**]**.**]**

**Recitals:**

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, executed by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), Lender has agreed to make a loan to Borrower in the original principal amount of $\_\_\_\_\_\_\_\_\_ (the “**Mortgage Loan**”), as evidenced by, among other things, that certain Multifamily Note dated as of the date hereof, executed by Borrower and made payable to Lender in the amount of the Mortgage Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Note**”).

B. In addition to the Loan Agreement, the Mortgage Loan and the Note are also secured by, among other things, a certain Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Security Instrument**”).

C. Borrower is the owner of a Seniors Housing Facility known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Mortgaged Property**”), located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[INSERT COUNTY, STATE]** (the “**State**”). A legal description of the Mortgaged Property is attached hereto as Exhibit A.

D. Master Lessee is the tenant under that certain **[**Lease Agreement or Operating Lease – **DRAFTING NOTE: ADD TITLE OF LEASE]**, between Master Lessee, as tenant and Borrower, as landlord, covering the Mortgaged Property (as the same has been amended to date and as may be further amended, modified and extended with Lender’s prior written consent, the “**Operating Lease**”).

**[DRAFTING NOTE: MODIFY RECITALS TO REFLECT ANY SUBLEASE STRUCTURES, INCLUDING CREATION OF DEFINED TERM “SUBLEASE”]**

E. Concurrently with the execution of this Assignment, Master Lessee is executing and delivering to Lender a Master Lessee’s Estoppel Certificate with respect to the terms of the Operating Lease.

F. As additional security for the Mortgage Loan, Master Lessee has simultaneously herewith entered into that certain [Collateral Assignment of Licenses] and that certain [Collateral Assignment of Contracts]. **[DRAFTING NOTE: MODIFY AS NECESSARY]**

G. Lender requires that Master Lessee subordinate its right, title and interest to and under the Operating Lease to the Loan Documents and Master Lessee is willing to so subordinate, all on the terms set forth in this Assignment, and to assign all of its interest, as applicable, in Leases, Rents, Personalty, and Accounts to Lender as additional security for the Mortgage Loan.

**AGREEMENTS:**

NOW, THEREFORE, for good and valuable consideration, including the material financial benefit to be derived by Master Lesseeand Borrower as a result of Lender’s making of the Mortgage Loan and approval of the Operating Lease, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Borrower, Lender and Master Lessee agree as follows:

Definitions; Parties.

## Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement or the Security Instrument, as applicable. The following terms, when used in this Assignment, have the meanings set forth in Schedule 1 attached hereto.

# Subordination of Operating Lease to Mortgage Lien.

## Master Lessee acknowledges, confirms, agrees and covenants that the Operating Lease and the rights of Master Lessee under the Operating Lease, all of Master Lessee’s right, title and interest in and to the Mortgaged Property covered by the Operating Lease, and any Operating Lease hereafter executed by Master Lessee covering any part of the Mortgaged Property, are and shall be subject, subordinate and inferior to:

## the Loan Documents encumbering the Mortgaged Property and the rights of Lender under such Loan Documents (including all renewals, modifications, consolidations, replacements and extensions) and to all advances made pursuant to the Security Instrument, including all sums advanced for the purposes of protecting or further securing the lien of the Security Instrument, curing defaults by Borrower under the Loan Documents or for any other purposes expressly permitted by the Security Instrument, or constructing, renovating, repairing, furnishing, or equipping the Mortgaged Property;

## all right, title and interest of Lender in the Mortgaged Property which is the subject of the Operating Lease; and

## all other security documents now or hereafter securing payment of the Indebtedness. Master Lessee acknowledges and agrees that in all events the provisions of the Loan Documents relative to the rights of Lender with respect to proceeds (other than those expressly allocated to Master Lessee by the applicable condemning authority) arising from a Condemnation Action or casualty shall at all times be prior and superior to and shall control over any contrary provisions in the Operating Lease.

## Without limitation of any other provision of this Assignment, Lender may, at its option and without joinder or further consent of Master Lessee, Borrower or any other Person, at any time after the date of this Assignment, subordinate the lien of the Loan Documents (or any other lien or security interest held by Lender which covers or affects the Mortgaged Property) to any or all of the Operating Lease by executing an instrument or instruments that are intended for that purpose and that specify such subordination and Master Lessee shall execute any documents reasonably required to evidence such subordination.

## Without limitation of the effect of such subordination, Master Lessee acknowledges and agrees that in all events the provisions of the Loan Documents relative to the rights of Lender with respect to proceeds (other than those expressly allocated to Master Lessee by the applicable condemning authority) arising from a Condemnation Action or casualty shall at all times be prior and superior to and shall control over any contrary provisions in the Operating Lease.

# Non-Disturbance.

Lender agrees that so long as there is no Master Lessee Default:

## Master Lessee’s possession of the Mortgaged Property under the Operating Lease shall not be disturbed or interfered with by Lender in the exercise of any of its rights under the Loan Documents, including any Foreclosure Event, or at any time thereafter, and

## Lender will not join Master Lessee as a party defendant for the purpose of terminating such Master Lessee’s interest and estate under the Operating Lease in any proceeding related to a Foreclosure Event, provided that Master Lessee may be made a party to such proceedings if and to the extent required under applicable law or procedure so long as the complaint therein does not seek termination of Master Lessee’s interest and estate under the Operating Lease.

# Attornment.

## In the event that a Successor Owner acquires title to or the right to possession of the Mortgaged Property upon a Foreclosure Event or a Subsequent Sale, Master Lessee agrees to attorn to such Successor Owner, recognize Successor Owner as landlord under the Operating Lease, and continued to be bound under all of the terms, covenants, and conditions of the Operating Lease. Successor Owner shall assume all of the obligations of Borrower under the Operating Lease subject to the provisions of this Assignment. Accordingly, from and after such event, Successor Owner and Master Lessee shall have the same remedies against each other for the breach of an agreement contained in the Operating Lease as Master Lessee and Borrower had before Successor Owner succeeded to the interest of Borrower; provided, however, that Successor Owner shall not be:

## responsible for the performance of any covenant or obligation of any Previous Landlord under the Operating Lease that is either personal to the Previous Landlord or otherwise not susceptible to performance by Successor Owner;

## liable for any act, omission, default, misrepresentation, or breach of warranty, of any Previous Landlord or obligations accruing as to the Mortgaged Property prior to Successor Owner’s actual ownership of the Mortgaged Property;

## subject to any offset, recoupment, estoppel, defense, claim or counterclaim that Master Lessee might be entitled to assert against any Previous Landlord;

## bound by any payment of rent, additional rent, supplemental rent or other charges or payments Master Lessee may have made to any Previous Landlord for more than one (1) month in advance;

## bound by any consent or acquiescence by any Previous Landlord under the Operating Lease to any assignment of the Operating Lease hereafter granted, or any termination or cancellation of the Operating Lease, in each case, given or done during the term of this Assignment without the prior written consent of Lender; or

## liable for the return or application of any security deposit or other deposit or security that Master Lessee may have given to any Previous Landlord that has not been transferred to Successor Owner.

## The provisions of this Assignment regarding recognition by Master Lessee shall be self-operative and effective without the necessity of execution of any new Operating Lease or other document on the part of any party to this Assignment or the respective heirs, legal representatives, successors or assigns of any such party (provided, however, if applicable law shall require additional documentation at the time Lender exercises its remedies then Master Lessee shall execute such additional documents evidencing such attornment as may be required by applicable law). Further, Borrower and Master Lessee agree to execute and deliver at any time and from time to time, upon the request of Lender or any Successor Owner or any prospective Successor Owner, any instrument or certificate which, in the reasonable judgment of Lender or any Successor Owner or any prospective Successor Owner, may be necessary or appropriate in or following any such Foreclosure Event to evidence such recognition, and a subordination, non-disturbance and attornment agreement with any lender on the Mortgaged Property consistent with the terms hereof.

# [DRAFTING NOTE: INCLUDE SECTIONS 5 AND 6 IF MASTER LESSEE HAS SUBLEASES WITH TENANTS OF THE MORTGAGED PROPERTY:

# Uniform Commercial Code Security Agreement.

## In consideration of Lender’s approval of the Operating Lease, and to secure to Lender the performance of the covenants and agreements of Master Lessee contained in this Assignment, Master Lessee hereby pledges, assigns, and grants to Lender a continuing security interest in the UCC Collateral (to the extent Master Lessee has an interest therein). This Assignment constitutes a security agreement and a financing statement under the UCC. Master Lessee hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest without the signature of Master Lessee. If a Master Lessee Default has occurred and is continuing, Lender shall have the remedies of a secured party under the UCC or otherwise provided at law or in equity, in addition to all remedies provided by this Assignment. Lender may exercise any or all of its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability or validity of Lender’s other remedies. For purposes of the UCC, the debtor is Master Lessee and the secured party is Lender. The name and address of the debtor and secured party are set forth after the signature blocks below which are the addresses from which information on the security interest may be obtained.

## Master Lessee represents and warrants that:  Master Lessee maintains its chief executive office at the location set forth after Master Lessee’s signature below, and Master Lessee will notify Lender in writing of any change in its chief executive office within five (5) days of such change;  Master Lessee’s state of incorporation, organization, or formation, if applicable, is as set forth on Page 1 of this Assignment;  Master Lessee’s exact legal name is as set forth on Page 1 of this Assignment;  Master Lessee’s organizational identification number, if applicable, is as set forth after Master Lessee’s signature below;  Master Lessee is the owner of the UCC Collateral subject to no liens, charges or encumbrances other than the lien hereof and any pledge to Borrower under the Operating Lease;  except as expressly provided in the Loan Agreement, the UCC Collateral will not be removed from the Mortgaged Property without the consent of Lender; and  no financing statement covering any of the UCC Collateral or any proceeds thereof is on file in any public office except pursuant hereto or pursuant to the other Loan Documents.

## All property of every kind acquired by Master Lessee with respect to the Mortgaged Property after the date of this Assignment which by the terms of this Assignment shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Master Lessee and without further conveyance or assignment become subject to the lien and security interest created by this Assignment. Nevertheless, Master Lessee shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Assignment and to comply with the re-recording requirements of the UCC.

# Assignment of Leases and Rents; Appointment of Receiver; Lender in Possession.

## As part of the consideration for Lender’s approval of the Operating Lease, Master Lessee absolutely and unconditionally assigns and transfers to Lender any interest it has in and to all Leases and Rents. It is the intention of Master Lessee to establish present, absolute and irrevocable transfers and assignments to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Master Lessee. Master Lessee and Lender intend these assignments of Leases and Rents to be effective immediately and to constitute absolute present assignments, and not assignments for additional security only. However, if these present, absolute and unconditional assignments of Leases and Rents are not enforceable by their terms under the laws of the Property Jurisdiction, then it is the intention of Master Lessee that in this circumstance this Assignment create and perfect a lien on Leases and Rents in favor of Lender to secure the obligations of Master Lessee under this Assignment and Borrower’s obligations under the Loan Documents, which lien shall be effective as of the date of this Assignment.

## Until a Master Lessee Default has occurred and is continuing, but subject to the limitations set forth in this Assignment, Master Lessee shall have a revocable license to exercise all rights, power and authority granted to Master Lessee under the Leases (including the right, power and authority to modify the terms of any Lease, extend or terminate any Lease, or enter into a new Lease, other than a Seniors Housing Facility Lease, subject to the limitations set forth in this Assignment and the Loan Agreement), and to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender, and, if applicable, to apply all Rents to pay the Operating Lease Rent, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities and Impositions (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Master Lessee Default has occurred and is continuing (and no event which, with the giving of notice or the passage of time, or both, would constitute a Master Lessee Default has occurred and is continuing), the Rents remaining after application pursuant to the preceding sentence may be retained and distributed by Master Lessee free and clear of, and released from, Lender’s rights with respect to Rents under this Assignment.

## If a Master Lessee Default has occurred and is continuing, without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, the revocable license granted to Master Lessee pursuant to Section 6(b) shall automatically terminate, and Lender shall immediately have all rights, powers and authority granted to Master Lessee under any Lease (including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease) and, without notice, Lender shall be entitled to all Rents as they become due and payable, including Rents then due and unpaid. During the continuance of a Master Lessee Default, Master Lessee authorizes Lender to collect, sue for and compromise Rents and directs each resident or tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender, and Master Lessee shall, upon Master Lessee’s receipt of any Rents from any sources, pay the total amount of such receipts to Lender. Although the foregoing rights of Lender are self-effecting, at any time during the continuance of a Master Lessee Default, Lender may make demand for all Rents, and Lender may give, and Master Lessee hereby irrevocably authorizes Lender to give, notice to all residents or tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No resident or tenant shall be obligated to inquire further as to the occurrence or continuance of a Master Lessee Default, and no resident or tenant shall be obligated to pay to Master Lessee any amounts that are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each resident or tenant personally, by mail or by delivering such demand to each rental unit.

## If a Master Lessee Default has occurred and is continuing, Lender is further authorized to give notice to all Third Party Payment payors (other than Medicaid payments from governmental entities) at Lender’s option, instructing them to pay to Lender all Third Party Payments which would otherwise be paid to Master Lessee, to the extent permitted by law.

## If a Master Lessee Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender’s security or the solvency of Master Lessee, and even in the absence of waste, enter upon, take and maintain full control of the Mortgaged Property, and may exclude Master Lessee and its agents and employees therefrom, in order to perform all acts that Lender, in its discretion, determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents (including through use of a lockbox arrangement, cash management arrangement or depositary agreement, at Lender’s election), the making of repairs to the Mortgaged Property and the execution or termination of contracts (subject to the Assignment of Contracts) providing for goods or services at or otherwise in connection with the operation, use or maintenance of the Mortgaged Property, paying fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, obtaining (or force-placing) the insurance required by the Loan Documents, for the purposes of enforcing the assignments of Leases and Rents, protecting the Mortgaged Property or the security of this Assignment and the Mortgage Loan, or for such other purposes as Lender in its discretion may deem necessary or desirable.

## Notwithstanding any other right provided Lender under this Assignment or any other Loan Document, if a Master Lessee Default has occurred and is continuing, and regardless of the adequacy of Lender’s security or Master Lessee’s solvency, and without the necessity of giving prior notice (oral or written) to Master Lessee, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in Sections 6(c), (d) and (e). If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after a Master Lessee Default has occurred and is continuing, Master Lessee, by its execution of this Assignment, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte*, if permitted by applicable law. Master Lessee consents to shortened time consideration of a motion to appoint a receiver. Lender or the receiver, as applicable, shall be entitled to receive a reasonable fee for managing the Mortgaged Property and such fee shall become an additional part of the Indebtedness. Immediately upon appointment of a receiver or Lender’s entry upon and taking possession and control of the Mortgaged Property, possession of the Mortgaged Property and all documents, records (including records on electronic or magnetic media), accounts, surveys, plans and specifications relating to the Mortgaged Property, and all security deposits and prepaid Rents, shall be surrendered to Lender or the receiver, as applicable. If Lender or receiver takes possession and control of the Mortgaged Property, Lender or receiver may exclude Master Lessee and its representatives from the Mortgaged Property.

## The acceptance by Lender of the assignments of the Leases and Rents pursuant to this Section 6 shall not at any time or in any event obligate Lender to take any action under this Assignment or to expend any money or to incur any expense. Lender shall not be liable in any way for any injury or damage to person or property sustained by any Person in, on or about the Mortgaged Property, provided that Lender shall not be released from liability that occurs as a result of Lender’s gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final, non-appealable court order. Prior to Lender’s appointment of a receiver or Lender’s entry upon and taking of possession and control of the Mortgaged Property, as applicable, Lender shall not 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);

## obligated to appear in or defend any action or proceeding relating to any Lease or the Mortgaged Property; or

## responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property.

## Lender shall be liable to account only to Borrower and Master Lessee and only for Rents actually received by Lender. Lender shall not be liable to Borrower or Master Lessee, anyone claiming under or through Borrower, Master Lessee or anyone having an interest in the Mortgaged Property by reason of any act or omission of Lender under this Section 6, and Borrower and Master Lessee hereby release and discharge Lender from any such liability to the fullest extent permitted by law, provided that Lender shall not be released from liability that occurs as a result of Lender’s gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final, non-appealable court order. If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall be added to, and become a part of, the principal balance of the Indebtedness (and secured by this Assignment and the Security Instrument), be immediately due and payable, and bear interest at the Default Rate from the date of disbursement until fully paid. Any entering upon and taking control of the Mortgaged Property by Lender or the receiver, and any application of Rents as provided in this Assignment, shall not cure or waive any Default, or invalidate any other right or remedy of Lender under applicable law or provided for in this Assignment or any Loan Document.

## Borrower and Master Lessee acknowledge and agree that the exercise by Lender of any of the rights conferred in this Assignment shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered upon and taken possession and control of the Mortgaged Property.**]**

# Assignment of Operating Lease.

## Master Lessee acknowledges that Borrower has assigned to Lender the Operating Lease and the rents and other amounts, including lease termination fees, if any, due and payable under the Operating Lease. In connection therewith, Master Lessee agrees that, upon receipt by Master Lessee of a notice from Lender (or otherwise acquiring actual knowledge) of the occurrence of a default by Borrower under such assignment and a demand by Lender for direct payment to Lender of the rents due under the Operating Lease, Master Lessee will honor such demand and make all subsequent rent payments directly to Lender. Borrower hereby agrees that any rents, fees or other amounts paid by Master Lessee to or as directed by Lender pursuant to this Section 7 shall be deemed to have been duly and validly paid by Master Lessee under the Operating Lease, and any such amounts shall be credited against Master Lessee’s obligations under the Operating Lease as if the same were paid directly to Borrower. Borrower and Master Lessee each agree that Master Lessee shall have no obligation to determine whether Borrower is in default under such assignment, and Master Lessee may rely on such notice and direction from Lender without any duty to investigate.

## If, after Master Lessee receives notice (or otherwise acquires actual knowledge) of a Default, Master Lessee receives any payments pursuant to the Operating Lease other than from Lender, or if Master Lessee receives any other payment or distribution of any kind from Borrower or from any other Person other than from Lender in connection with the Operating Lease which Master Lessee is not permitted by this Assignment to retain for its own account, such payment or other distribution will be received and held in trust for Lender and promptly remitted in readily available funds to Lender, properly endorsed to Lender, to be applied to amounts due under the Loan Documents in such order and in such manner as Lender shall determine.

# Master Lessee Representations and Warranties.

Master Lessee represents and warrants to Lender as follows as of the date of this Assignment:

## Master Lessee is not an Affiliated Property Operator;

## Master Lessee has unconditionally accepted delivery of the Mortgaged Property pursuant to the terms of the Operating Lease and is operating the Mortgaged Property as a Seniors Housing Facility;

## Master Lessee has not executed any prior assignment of Leases or Rents with respect to the Mortgaged Property that is currently in effect;

## Master Lessee has received from Borrower and reviewed a fully executed copy of the Loan Agreement and each of the other Loan Documents that set forth the Operating Covenants; **[DRAFTING NOTE: MODIFY IF DEFINITION OF OPERATING COVENANTS IS MODIFIED]**

## Master Lessee has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions (as such term is defined in the Environmental Indemnity Agreement) other than Prohibited Activities or Conditions that are the subject of an O&M Plan approved in writing by Lender; to Master Lessee’s knowledge, no Prohibited Activities or Conditions exist or have existed on the Mortgaged Property, and Master Lessee has complied with all Environmental Laws, including all requirements for notification regarding the presence of or any releases of Hazardous Materials;

## Master Lessee has not filed and is not subject to any filing for bankruptcy or reorganization under any applicable bankruptcy or insolvency laws;

## there are no claims, actions, suits, or proceedings at law or in equity by or before any Governmental Authority now pending against, affecting or, to Master Lessee’s knowledge, threatened against Master Lessee, any entity that Controls Master Lessee, or the Mortgaged Property that would adversely affect the Licenses or the operations at the Mortgaged Property. Master Lessee is not currently operating under a consent order or decree, or any other agreement or decree mandated by any Governmental Authority that restricts or otherwise affects the operation of the Mortgaged Property;

## if Master Lessee is a HIPAA Covered Entity or HIPAA Business Associate, Master Lessee has developed and implemented appropriate administrative, technical and physical safeguards to protect the privacy and security of Protected Health Information (as that term is defined in HIPAA), and otherwise achieved substantial compliance with applicable HIPAA requirements, including those concerning privacy, breach notification, security and electronic transaction standards;

## Master Lessee is duly organized, validly existing and qualified to transact business in the Property Jurisdiction;

## Master Lessee has the requisite power and authority to carry on its business as now conducted and as contemplated to be conducted in connection with the performance of its obligations under this Assignment; and

## the execution, delivery and performance of this Assignment have been duly authorized by all necessary action and proceedings by or on behalf of Master Lessee, and no further approvals or filings of any kind, including any approval of or filing with any Governmental Authority, are required by or on behalf of Master Lessee as a condition to the valid execution, delivery and performance by Master Lessee of the Operating Lease and this Assignment.

# Master Lessee Covenants.

Master Lessee covenants with Lender that during the term of this Assignment Master Lessee shall:

## execute a joinder to the Loan Agreement and a joinder to the Security Instrument in the form required by Lender in the event that Master Lessee becomes an Affiliated Property Operator;

## cooperate with Lender, including attendance at any meetings requested by Lender (after reasonable prior notice), and, as required by the Loan Documents, furnishing financial statements of Master Lessee (in connection with the operation of the Mortgaged Property) and operating statements for the Mortgaged Property, and allowing Lender to undertake inspections of the Mortgaged Property;

## comply with all Operating Covenants, including arranging for the escrow of Taxes and insurance with Lender and providing insurance coverage in accordance with Lender’s requirements;

## if, by reason of its exercise of any right or remedy under the Operating Lease, Master Lessee acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this Section 9(d)) would be senior to the lien of the Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Security Instrument and this Assignment;

## deliver to Lender at the address indicated below and at the same time as such notice is given to Borrower, any notice of default under the Operating Lease;

## certify promptly in writing to Lender in connection with any proposed assignment of the Mortgage Loan, whether or not any default on the part of Borrower then exists under the Operating Lease and, upon not less than ten (10) Business Days prior written notice from Lender, shall execute such estoppel certificates as Lender shall reasonably require;

## promptly inform Lender in writing (and shall deliver to Lender copies of any related written communications, complaints, orders, judgments and other documents) relating to the commencement of any rulemaking or disciplinary proceeding or the promulgation of any proposed or final rule which would have, or may reasonably be expected to have, a material adverse effect on Master Lessee’s ability to operate and manage the Mortgaged Property or on the Mortgaged Property itself; the receipt of notice from any Governmental Authority having jurisdiction over Master Lessee that Master Lessee is being placed under regulatory supervision, any License, permit, charter, membership or registration material to the conduct of Master Lessee’s business or the Mortgaged Property is to be suspended or revoked, or Master Lessee is to cease and desist any practice, procedure or policy employed by Master Lessee in the conduct of its business, and such cessation would have, or may reasonably be expected to have, a material adverse effect on the Mortgaged Property;

## provide immediate written notice to Lender of any claims, actions, suits, or proceedings at law or in equity (including any insolvency, bankruptcy, or receivership proceeding) by or before any Governmental Authority pending against, affecting or, to Master Lessee’s knowledge, threatened against Master Lessee, any entity that Controls Master Lessee, or the Mortgaged Property, which claims, actions, suits, or proceedings, if adversely determined reasonably would be expected to materially adversely affect the financial condition or business of Master Lessee, or the condition, operation, or ownership of the Mortgaged Property;

## provide to Lender within ten (10) days after its receipt, copies of all inspection reports, surveys, reviews, and certifications prepared by, for, or on behalf of any licensing or regulatory authority relating to the Mortgaged Property and any legal actions, orders, notices, or reports relating to the Mortgaged Property issued by the applicable regulatory or licensing authorities;

## if Master Lessee is a HIPAA Covered Entity or HIPAA Business Associate, at all times remain in substantial compliance with applicable HIPAA requirements, including those concerning privacy, breach notification, security and electronic transaction standards;

## provide Borrower complete access during the term of this Assignment to the organizational, financial, and operational information and documentation of Master Lessee in every respect as it relates to the Mortgage Loan, the Mortgaged Property, and the Operating Lease (collectively, the “**Master Lessee Business Information**”). Borrower shall continue to be fully informed regarding the Master Lessee Business Information and shall have complete access to the Master Lessee Business Information as if Borrower were the day-to-day operator of the Mortgaged Property and the business activities thereon;

## not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings with respect to Borrower, during the term of this Assignment, without Lender’s prior written consent;

## not seek to terminate the Operating Lease by reason of any default of Borrower without prior written notice to Lender and the lapse of such time as was offered to Borrower under the Operating Lease in which to remedy the default, and the lapse of thirty (30) days after the expiration of such time as Borrower was permitted to cure such default; provided, however, that with respect to any default of Borrower under the Operating Lease which cannot be remedied within such time, if Lender commences to cure such default within such time and thereafter diligently proceeds with such efforts and pursues the same to completion, Lender shall have such time as is reasonably necessary to complete curing such default, including acquiring the Mortgaged Property through a Foreclosure Event. Notwithstanding the foregoing, in the event either Lender or Borrower do not cure or commence curing such default within the time provided to Borrower under the Operating Lease and the nature of the default threatens Master Lessee’s ability to conduct its daily business or threatens to materially or adversely damage its property located on the Mortgaged Property, Master Lessee shall be permitted to exercise its rights under the Operating Lease;

## not pay Operating Lease Rent more than thirty (30) days in advance of the date on which the same are due or to become due under the Operating Lease;

## not create, incur, or assume any lien on the Mortgaged Property or any part of the Mortgaged Property or pledge any interest in the Mortgaged Property or any part of the Mortgaged Property, except as provided in the Loan Documents;

## not without the prior written consent of Lender extend, modify or terminate any of the terms or provisions of the Operating Lease, assign its rights under the Operating Lease, in connection with any Operating Lease that is a master lease covering more than one property, add or release any property subject to the Operating Lease, or transfer the Operating Lease. Within five (5) days of Master Lessee’s receipt, Master Lessee shall give Lender written notice of any notice or information that Master Lessee receives which indicates that any party is in default under the terms of the Operating Lease, is extending, modifying or terminating the Operating Lease, or is otherwise discontinuing its ownership, operation or management of the Mortgaged Property; and

## not perform any acts and has not executed, and shall not execute any instrument which would prevent Lender from exercising its rights under the Loan Documents.

# Events of Default; Remedies.

## Borrower and Master Lessee hereby acknowledge that a Master Lessee Default shall also constitute an Event of Default under the Loan Agreement. If a Default has occurred and is continuing, Lender shall have the right to exercise all rights as owner of the Mortgaged Property under the Operating Lease, subject to the terms of this Assignment. Notwithstanding the foregoing, Borrower shall have thirty (30) days after acquiring actual knowledge of a Master Lessee Default to cure such Master Lessee Default or replace Master Lessee as the operator of the Mortgaged Property in accordance with the provisions of the Loan Agreement, which period may be extended by one or more periods of thirty (30) days if Borrower, in the discretion of Lender, is diligently pursuing such cure or replacement. If, after the expiration of the aforementioned thirty (30) day period and applicable extension thereof, Borrower has either cured the Master Lessee Default or replaced Master Lessee as the operator of the Mortgaged Property, then such Master Lessee Default shall not be deemed to constitute an Event of Default under the Loan Agreement.

## In the event Master Lessee fails to use and operate the Mortgaged Property according to the Operating Covenants, Lender shall have the right to enforce the Operating Covenants directly against Master Lessee in accordance with this Assignment.

## If a Master Lessee Default has occurred and is continuing, or a ny action or proceeding is commenced which purports to affect the Mortgaged Property, Lender’s security, rights or interests under any Loan Document, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Environmental Laws, fraudulent conveyance or reorganizations or proceedings involving a bankruptcy or decedent, then Lender may, at its option, make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Master Lessee and to protect the Mortgaged Property, Lender’s security, rights or interest, including  payment of fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants,  entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property,  procurement of the insurance required by the Loan Agreement, and  payment of any amounts required under this Assignment, the Loan Agreement, or the Operating Lease which Master Lessee has failed to pay. Any amounts disbursed by Lender under this Section 10(c), or under any other provision of this Assignment that treats such disbursement as being made under this Section 10(c), due to Master Lessee’s failure to perform its obligations under this Assignment or the Operating Lease, shall be immediately due and payable to Lender from Master Lessee and shall become an additional part of the Indebtedness. The foregoing provisions shall not require Lender to incur any expense or take any action.

## If a Master Lessee Default has occurred and is continuing, Lender shall have the right any time thereafter to terminate the Operating Lease without cause and without payment of any cancellation or termination fee, penalty or other liability, by giving written notice to Master Lessee of its election to do so. Lender’s notice shall specify the date of termination, which shall not be less than thirty (30) days after the date of such notice, except such lesser notice as Lender deems to be appropriate in the event of an emergency or impairment of Lender’s collateral. Such termination right shall supersede any limitation on termination rights contained in the Operating Lease and serve as consideration for the material benefit derived by Master Lessee from Lender’s making of the Mortgage Loan and approval of the Operating Lease.

## On the effective date of termination of the Operating Lease, Master Lessee shall turn over to Lender all books and records relating to the Mortgaged Property and the residents and tenants (copies of which may be retained by Master Lessee, at Master Lessee’s expense), together with such authorizations and letters of direction addressed to residents, tenants, suppliers, employees, banks and other parties as Lender may reasonably require. A final accounting of unpaid fees (if any) due to Master Lessee under the Operating Lease shall be made within sixty (60) days after the effective date of termination, but Lender shall not have any liability or obligation to Master Lessee for unpaid fees or other amounts payable under the Operating Lease which accrue before Lender acquires title to the Mortgaged Property, or before Lender becomes a mortgagee in possession (other than as set forth herein).

## If a Master Lessee Default has occurred and is continuing, Master Lessee shall furnish promptly to Lender evidence of deposits and withdrawals from any account held or controlled by Master Lessee relating to the Mortgaged Property.

## If a Default has occurred and is continuing, Lender or its designee may (in Lender’s sole discretion) direct Master Lessee to pay Lender directly all Operating Lease Rent and other payments due under the Operating Lease.

## If a Master Lessee Default has occurred and is continuing, Lender may, without demand and without advertisement or notice, at any time or times, sell and deliver any or all Personalty held by or for it at public or private sale, for cash, upon credit or otherwise, at such prices and upon such terms as Lender, in its sole discretion, deems advisable. Subject to the provisions of applicable law, Lender may postpone or cause the postponement of the sale of all or any portion of the Personalty by announcement at the time and place of such sale, and such sale may, without further notice, be made at the time and place to which the sale has been postponed or Lender may further postpone such sale by announcement made at such time and place. Without in any way limiting the foregoing, Lender shall, if a Master Lessee Default has occurred and is continuing, have the right, in addition to all other rights provided herein or by law, to enter without legal process upon the Mortgaged Property (provided that such entry be done lawfully) for the purpose of taking possession of the Personalty, and the right to maintain such possession on the Mortgaged Property or to remove the Personalty or any part thereof to such other places as Lender may desire. Whether or not Lender exercises its right to take possession of the Personalty, Master Lesseeshall, upon Lender’s demand, promptly assemble the Personalty and make it available to Lender at the Mortgaged Property.

# No Assumption of Obligations.

Borrower and Master Lessee agree that Lender does not assume any obligations or duties of Borrower and Master Lesseeconcerning the Operating Lease until and unless Lender shall exercise its rights hereunder after a Foreclosure Event occurs.

# Power of Attorney.

Borrower and Master Lesseehereby irrevocably constitute and appoint Lender as Borrower’s and Master Lessee’s attorney-in-fact to demand, receive and enforce their rights with respect to the provisions set forth in this Assignment, to give appropriate receipts, releases and satisfactions for and on Borrower’s and Master Lessee’s behalf and to do any and all acts in Borrower’s or Master Lessee’s names or in the name of Lender with the same force and effect as Borrower or Master Lesseecould do if this Assignment had not been made. If Lender is collecting the Accounts directly as provided herein, Master Lessee hereby constitutes Lender or Lender’s designee as Master Lessee’s attorney-in-fact with power with respect to the Accounts to: endorse Master Lessee’s name upon all notes, acceptances, checks, drafts, money orders or other evidences of payment that may come into Lender’s possession; notify the U.S. Post Office to change the address for delivery of mail addressed to Master Lessee for the Mortgaged Property to such address as Lender may designate; and receive, open and dispose of all such mail addressed to Master Lessee. The foregoing appointment shall be deemed to be coupled with an interest and irrevocable.

# Indemnification.

By executing this Assignment, Master Lessee agrees to indemnify and hold harmless Lender and its successors and assigns from and against any and all losses, claims, damages, liabilities and expenses including attorneys’ fees and costs, which may be imposed or incurred in connection with this Assignment.

# Consideration.

As consideration for the material financial benefit to be derived by Master Lesseeand Borrower as a result of Lender’s making of the Mortgage Loan and approval of the Operating Lease, Master Lessee and Borrower acknowledge receipt of good and valuable consideration for Master Lessee’s and Borrower’s entry into this Assignment.

# Modifications to Loan Documents.

Any amendments heretofore or hereafter made to any of the Loan Documents, other than this Assignment, shall not require the consent of Master Lessee. Borrower shall be responsible for notifying Master Lessee of any amendments to the Operating Covenants and Master Lessee shall be responsible for any modified Operating Covenants.

# Lender Requests.

Within ten (10) days of written request of Lender, Master Lesseeshall promptly furnish to Lender copies of all Leases, books, records, monthly reports, statements of account, budgets, third party payment documentation, including reimbursement agreements, surveys, statements of deficiencies and plans of correction, and cost reports related to any payments or the right to receive payments from federal, state or local programs, boards, bureaus or agencies, and other items which Master Lesseeis required to maintain or otherwise maintains under the Operating Lease or the Operating Covenants or which Master Lesseemaintains with respect to the Mortgaged Property.

# Notice.

* 1. **Process of Serving Notice.**

All notices under this Assignment shall be:

* + 1. in writing and shall be:
       1. delivered, in person;
       2. mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
       3. sent by overnight courier; or
       4. sent by electronic mail with originals to follow by overnight courier;
    2. addressed to the intended recipient at its respective address set forth at the end of this Assignment; and
    3. deemed given on the earlier to occur of:

(A) the date when the notice is received by the addressee; or

(B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.

* 1. **Change of Address.**

Any party to this Assignment may change the address to which notices intended for it are to be directed by means of notice given to the other parties to this Assignment in accordance with this Section 17.

* 1. **Default Method of Notice.**

Any required notice under this Assignment which does not specify how notices are to be given shall be given in accordance with this Section 17.

* 1. **Receipt of Notices.**

Borrower, Master Lessee and Lender shall not refuse or reject delivery of any notice given in accordance with this Assignment. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

# Counterparts.

This Assignment may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.

# Governing Law; Venue and Consent to Jurisdiction.

* 1. **Governing Law.**

The validity, enforceability, interpretation, and performance of this Assignment shall be governed by the laws of the State without giving effect to any conflict of law or choice of law rules that would result in the application of the laws of another jurisdiction.

* 1. **Venue; Consent to Jurisdiction.**

In the administration or litigation of a controversy arising under or in relation to this Assignment or the security for the Indebtedness, Master Lessee and Borrower each consents to the exercise of personal jurisdiction by State court or federal court in such State. Master Lessee and Borrower each agrees that the State courts have subject matter jurisdiction over such controversies. If Lender elects to sue in State court, Master Lessee and Borrower each waives any right to remove to federal court or to contest the State court’s jurisdiction. Master Lessee and Borrower waive any objection to venue in any State court or federal court in such State, and covenants and agrees not to assert any objection to venue, whether based on inconvenience, domicile, habitual residence, or other ground.

# Successors and Assigns.

This Assignment shall be binding upon Borrower, Master Lessee and Lender and their respective successors, transferees and assigns, and shall inure to the benefit of and may be enforced by Lender and its successors, transferees and assigns. Borrower and Master Lesseeshall not assign any of their respective rights and obligations under this Assignment without the prior written consent of Lender.

# Entire Agreement; Amendments and Waivers.

This Assignment contains the complete and entire understanding of the parties as to its subject matter. No amendment to this Assignment will be valid unless it is made in writing and executed by the parties to this Assignment. No specific waiver or forbearance for any breach of any of the terms of this Assignment shall be considered as a general waiver of that or any other term of this Assignment.

# Relationship of Parties.

Nothing contained in this Assignment shall constitute Lender as a joint venturer, partner or agent of Borrower or Master Lessee, or render Lender liable for any debts, obligations, acts, omissions or representations of Borrower or Master Lesseeexcept as provided herein.

# Enforceability.

The determination of invalidity, illegality or unenforceability of any provision of this Assignment, pursuant to judicial decree, shall not affect the validity or enforceability of any other provision of this Assignment, each of which shall remain in full force and effect.

# Construction.

* 1. The captions and headings of the sections of this Assignment are for convenience only and shall be disregarded in construing this Assignment.
  2. Any reference in this Assignment to an “Exhibit” or “Schedule” or a “Section” or an “Article” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit or Schedule attached to this Assignment or to a Section or Article of this Assignment. All Exhibits and Schedules attached to or referred to in this Assignment, if any, are incorporated by reference into this Assignment.
  3. Any reference in this Assignment to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.
  4. Use of the singular in this Assignment includes the plural and use of the plural includes the singular.
  5. As used in this Assignment, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only and not a limitation.
  6. Whenever Borrower’s or Master Lessee’s knowledge is implicated in this Assignment or the phrase “to Borrower’s knowledge,” “to Master Lessee’s knowledge” or a similar phrase is used in this Assignment, Borrower’s or Master Lessee’s knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower’s or Master Lessee’s knowledge after reasonable and diligent inquiry and investigation.
  7. Unless otherwise provided in this Assignment, if Lender’s approval, designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such approval, designation, determination, selection, estimate, action or decision shall be made in Lender’s sole and absolute discretion.
  8. All references in this Assignment to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.
  9. “Lender may” shall mean at Lender’s discretion, but shall not be an obligation.

**[Remainder of Page Intentionally Blank]**

**IN WITNESS WHEREOF**, Borrower, Lender **[, Sublessee]** and Master Lesseehave executed this Assignment as of the day and year first written above.

|  |
| --- |
| **BORROWER**: |
| By: (SEAL)  Name:  Title: |
| The name and chief executive office of Borrower are:  Name:  Chief Executive Office Address:        **[INSERT BORROWER NOTICE ADDRESS IF DIFFERENT]** |

**[INCLUDE APPROPRIATE NOTARY ACKNOWLEDGMENT]**

|  |
| --- |
| **LENDER**: |
| By: (SEAL)  Name:  Title: |
| The name and chief executive office of Lender (as Secured Party) are:  Secured Party Name:  Secured Party Chief Executive Office Address:        **[INSERT LENDER NOTICE ADDRESS IF DIFFERENT]** |

**[INCLUDE APPROPRIATE NOTARY ACKNOWLEDGMENT]**

|  |
| --- |
| **MASTER LESSEE**: |
| By: (SEAL)  Name:  Title: |
| The name, chief executive office and organizational identification number of Master Lessee (as Debtor under any applicable Uniform Commercial Code) are:  Debtor Name/Record Owner:  Debtor Chief Executive Office Address:        Debtor Organizational ID Number:  **[INSERT MASTER LESSEE NOTICE ADDRESS IF DIFFERENT]** |

**[INCLUDE APPROPRIATE NOTARY ACKNOWLEDGMENT]**

|  |
| --- |
| **[SUBLESSEE**: |
| By: (SEAL)  Name:  Title: |
| The name, chief executive office and organizational identification number of Sublessee (as Debtor under any applicable Uniform Commercial Code) are:  Debtor Name/Record Owner:  Debtor Chief Executive Office Address:        Debtor Organizational ID Number:  **[INSERT SUBLESSEE NOTICE ADDRESS IF DIFFERENT]]** |

**[INCLUDE APPROPRIATE NOTARY ACKNOWLEDGMENT]**

**EXHIBIT A**

**TO SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AND ASSIGNMENT OF LEASES AND RENTS**

**Legal Description**

[Insert complete Legal Description of the Mortgaged Property]

**SCHEDULE 1**

**TO SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS**

**(OPERATING LEASE)**

**Definitions**

“**Accounts**” means all money, funds, investment property, accounts, general intangibles, deposit accounts, chattel paper, documents, instruments, judgments, claims, settlements of claims, causes of action, refunds, rebates, reimbursements, reserves, deposits, subsidies, proceeds, products, Rents, and profits, now or hereafter arising, received or receivable, from or on account of the ownership, management and operation of the Mortgaged Property.

“**Affiliated Property Operator**” means any Property Operator that:

(a) is Controlled by, under common Control with, or which Controls, Borrower, Guarantor, or Key Principal;

(b) is a Person in which Guarantor or Key Principal directly or indirectly owns twenty-five percent (25%) or more of the ownership interests in such Person; or

(c) is a Person which directly or indirectly owns twenty five percent (25%) or more of the ownership interests in Borrower, Guarantor, or Key Principal,

as identified in the Summary of Loan Terms.

“**Default**”means any (a) Master Lessee Default or (b) any “Event of Default” defined in the Loan Agreement.

“**Goods**” means (except as set forth on Schedule 2 attached hereto) all of the following that are (a) located on the Mortgaged Property, (b) used or intended to be used now or in the future in connection with the management or operation of the Mortgaged Property, or (c) held or generated by Master Lessee specifically with respect to the Mortgaged Property: inventory; furniture; furnishings; machinery, equipment, engines, boilers, incinerators, and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air or light; antennas, cable, wiring, and conduits used in connection with radio, television, security, fire prevention, or fire detection, or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains, and curtain rods; mirrors, cabinets, paneling, rugs, and floor and wall coverings; fences, trees and plants; swimming pools; exercise equipment; supplies; tools; books and records (whether in written or electronic form); websites, URLs, blogs and social network pages; computer equipment (hardware and software); all kitchen or restaurant supplies and facilities; dining room supplies and facilities; medical supplies and facilities; leasehold improvements, or related furniture and equipment; any other equipment, supplies or furniture owned by Master Lessee and leased to any third party service provider or any other lessee, operator or manager of the Mortgaged Property; and other tangible personal property which is used now or in the future in connection with the management or operation of the Mortgaged Property or is located on the Mortgaged Property; together with all present and future parts, additions, accessories, replacements, attachments, accessions, replacement parts and substitutions of the foregoing, and the proceeds thereof (cash and non-cash including insurance proceeds).

“**Land**” means the land described in Exhibit A.

“**Master Lessee**” has the meaning as defined in the Preamble above.

“**Master Lessee Default**” means (a) the failure of the Operating Lease to remain in full force and effect (unless such failure is caused solely by a Bankruptcy Event involving Borrower), (b) default by Master Lessee in the payment of rent, additional rent or other payments or in the performance of any of the other terms, covenants or conditions of the Operating Lease, beyond the period, if any, specified in the Operating Lease within which Master Lessee may cure such default, (c) the failure of any representation or warranty in this Assignment to be true and correct in any material respect when made, (d) failure by Master Lessee to perform any of its obligations under this Assignment after the expiration of any applicable notice and cure period, or (e) default by Master Lessee under any Operating Covenant beyond the period, if any, specified in the Loan Documents within which Borrower or Master Lessee may cure such default.

“**Mortgage Loan**” has the meaning as defined in Recital A above.

“**Mortgaged Property**” has the meaning as defined in Recital C above.

“**Operating Covenants**” means (a) all terms, conditions, provisions, requirements, representations, and affirmative and negative covenants of the Loan Documents relating to the use and operation of the Mortgaged Property, which also shall be deemed to run directly to Master Lessee, **[DRAFTING NOTE: LENDER MAY ALTER THIS TO REFER TO THE COVENANTS IN THE OPERATING LEASE RATHER THAN THE LOAN DOCUMENTS ONLY AFTER COMPARING LOAN DOCUMENTS COVENANTS AND THE OPERATING LEASE TO ENSURE THAT THE LEASE COVERS ALL OPERATING COVENANTS IN THE LOAN DOCUMENTS.]** and (b) terms, conditions, provisions, requirements, representations, and affirmative and negative covenants set forth in this Assignment.

“**Operating Lease**” means the lease as identified in Recital D above.

“**Operating Lease Rent**” meansany rent, fees or other sums due or to become due by Master Lessee to Borrower under the Operating Lease.

“**Personalty**” means (except as set forth on Schedule 2 attached hereto) all Goods, Accounts, choses in action, chattel paper, documents, general intangibles (including Software), payment intangibles, instruments, investment property, letter of credit rights, supporting obligations, computer information, source codes, object codes, records and data, all telephone numbers or listings, claims (including claims for indemnity or breach of warranty), deposit accounts and other property or assets of any kind or nature related to the Mortgaged Property now or in the future, and all other intangible property and rights relating to the ownership, operation or management of, or used in connection with, the Mortgaged Property, including all governmental permits relating to any activities on the Mortgaged Property and any names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property; provided, however, that the name “**[MASTER LESSEE TRADE NAME(S)]**” and associated trademark rights (collectively, the “**Brand Rights**”) are not assigned to Lender, subject to the following: Master Lessee agrees that if any signage or other materials bearing the Brand Rights exist on the Mortgaged Property on the date Lender acquires the Mortgaged Property through a Foreclosure Event, then Lender shall have an irrevocable license, coupled with an interest and for which consideration has been paid and received, to use the signage and materials bearing the Brand Rights then existing on the Mortgaged Property in connection with operating the Mortgaged Property for a period not to exceed one hundred eighty (180) days after the date Lender acquires the Mortgaged Property through a Foreclosure Event.

“**Previous Landlord**” means Borrower and any other person that was landlord under the Operating Lease at any time before a Successor Owner acquires title to or the right to possession of the Mortgaged Property.

“**Rents**” means all rents (whether from residential or non-residential space), revenues and other income from the Land or the Improvements, including rent paid under any Senior Housing Facility Lease, subsidy payments received from any sources, including payments under any “Housing Assistance Payments Contract” or other rental subsidy agreement (if any), parking fees, laundry and vending machine income, furniture rental income, and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and tenant security deposits, entrance fees (if any), application fees, processing fees, community fees, late fees and any other amounts or fees paid by any resident or tenant, together with and including all proceeds from any private insurance for residents to cover rental charges and charges for services at or in connection with the Mortgaged Property, and the right to Third Party Payments (other than payments by a Governmental Authority or a Managed Care Organization under a Medicaid Provider Agreement) due for the rents or services of residents at the Mortgaged Property.

“**Seniors Housing Facility Lease**” if applicable, means, individually and together, any Operating Lease or Sublease.

**[DRAFTING NOTE: INCLUDE IF THIS SNDA COVERS BOTH AN OPERATING LEASE AND A SUBLEASE:**

“**Sublease**” means the sublease as identified in Recital \_\_\_ above.

“**Sublessee**” has the meaning as defined in the Preamble above.**]**

“**Subsequent Sale**” means the first sale of the Mortgaged Property by Lender, Lender’s nominee or any trustee for Lender after a Foreclosure Event.

“**Successor Owner**” means any party that becomes owner of the Mortgaged Property as the result of a Foreclosure Event or a Subsequent Sale, including Lender and any nominee of Lender.

“**Third Party Payments**” means, with respect to the Mortgaged Property, all payments and the rights to receive such payments from Medicaid or other federal, state or local programs, boards, bureaus or agencies, and from residents, private insurers or others.

“**UCC Collateral**” means, collectively, the Operating Lease, any of the Accounts, Leases, Personalty, Rents and Third Party Payments which, under applicable law, may be subject to a security interest under the UCC, whether acquired now or in the future and all products and cash and non-cash proceeds thereof.

## **[DRAFTING NOTE: ADD THIS SECTION IF SNDA COVERS BOTH AN OPERATING LEASE AND A SUBLEASE AND THROUGHOUT THE BODY OF THIS DOCUMENT CHANGE (1) ALL REFERENCES FROM “OPERATING LEASE” TO “ANY SENIORS HOUSING FACILITY LEASE”, AS APPLICABLE, AND TAILOR AS APPROPRIATE AND (2) ALL REFERENCES FROM “MASTER LESSEE” TO “MASTER LESSEE AND SUBLESSEE”, AS APPLICABLE, AND TAILOR AS APPROPRIATE:**

Any reference to Master Lessee in this Assignment shall refer to Master Lessee or Sublessee each in their respective capacities as being responsible for the management and operation of the Mortgaged Property under the Operating Lease or Sublease, as applicable, and made a party hereto.

Any reference to Seniors Housing Facility Lease in this Assignment shall refer to the Operating Lease or Sublease with respect to Master Lessee and Sublessee, as applicable.

Any assignment of Leases, Rents, Personalty, Third Party Payments and Accounts made by a Master Lessee under this Assignment shall be to the extent such Master Lessee has a present or hereinafter acquired interest in such Leases, Rents, Personalty, Third Party Payments and Accounts.

Any representation, warranty or covenant made by a Master Lessee under this Assignment shall be to the extent that such Master Lessee has an interest in the Mortgaged Property or Operating Lease, as applicable. To the extent that a Master Lessee does not have an interest in the Mortgaged Property or Operating Lease, any such representation, warranty or covenant shall not be applicable to such party.**]**

**SCHEDULE 2**

**TO SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS**

**(OPERATING LEASE)**

**Exceptions**