

**2013-003605**

**Klamath County, Oregon**

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Prepared by, and after recording  
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**SUBORDINATION, ASSIGNMENT  
AND SECURITY AGREEMENT**

<b>Borrower:</b>	<b>ARHC PPKLAOR01, LLC</b>
<b>Lender:</b>	<b>Fannie Mae</b>
<b>Operator:</b>	<b>ARHC PPKLAOR01 TRS, LLC</b>
<b>Manager:</b>	<b>FM Pelican LLC</b>

**Statutory Notice:**

- A. The address of the entity holding a lien or other interest created by this Security Instrument is:** c/o Red Mortgage Capital, LLC  
Two Miranova Place, 12th Floor  
Columbus, Ohio 43215
- B. The tax account number(s) of the Land subject to the lien or in which the interest is created:** 3809-34BC-400  
3809-34BC-500  
3809-34BC-600

Subordination, Assignment and Security  
Agreement (Borrower and Property  
Operator) (Seniors Housing)  
Fannie Mae

Form 6446.SRS  
12-12

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**SUBORDINATION, ASSIGNMENT  
AND SECURITY AGREEMENT  
(Borrower and Property Operator)  
(Seniors Housing)**

This SUBORDINATION, ASSIGNMENT AND SECURITY AGREEMENT (this "**Assignment**") is made and entered into as of March 28, 2013, by and among (i) ARHC PPKLAOR01, LLC, a Delaware limited liability company ("**Borrower**"), (ii) FANNIE MAE, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. Section 1716 et seq. and duly organized and existing under the laws of the United States ("**Lender**"), (iii) ARHC PPKLAOR01 TRS, LLC, a Delaware limited liability company ("**Operator**"), and (iv) FM PELICAN LLC, an Oregon limited liability company ("**Manager**") (individually and collectively, Operator and Manager sometimes hereinafter referred to as "**Property Operator**").

**RECITALS:**

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of March 30, 2012, executed by and between Pelican Pointe Assisted Living, LLC, an Oregon limited liability company ("**Original Borrower**") and Red Mortgage Capital, LLC, a Delaware limited liability company ("**Original Lender**") (the "**Original Loan Agreement**"), Original Lender made a loan to Original Borrower in the original principal amount of Twelve Million Seven Hundred Fifty-Seven Thousand Five Hundred and 00/100 Dollars (\$12,757,500.00) (the "**Mortgage Loan**"), as evidenced by, among other things, that certain Multifamily Note dated as of March 30, 2012, executed by Original Borrower and made payable to Original 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 Original Loan Agreement, the Mortgage Loan and the Note are also secured by, among other things, a certain Multifamily Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of March 30, 2012 and recorded as instrument number 2012-003324 in the land records of Klamath County, Oregon (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Security Instrument**"). Original Lender has endorsed the Note to Lender, and has assigned its interest in the Security Instrument to Lender pursuant to that certain Assignment of Deed of Trust, dated as of March 30, 2012, and recorded as instrument number 2012-003325 in the land records of Klamath County, Oregon. Original Lender is the Servicer of the Mortgage Loan.

C. Borrower is the owner of the Mortgaged Property, a Seniors Housing Facility known as Pelican Pointe Assisted Living, located at 615 Washburn Way, Klamath Falls, Oregon. A legal description of the Mortgaged Property is attached hereto as Exhibit A.

D. Operator is the tenant of the Mortgaged Property pursuant to that certain Lease Agreement dated March 28, 2013, between Borrower and Operator (as may be hereinafter amended and modified from time to time, the “**Operating Lease**”) and is the holder of the Licenses, as set forth on Exhibit C, required to operate the Mortgaged Property as a Seniors Housing Facility.

E. Manager is the manager of the Mortgaged Property pursuant to that certain Management Agreement dated March 28, 2013, between Operator and Manager (as may be hereinafter amended or modified from time to time, the “**Management Agreement**”).

F. Original Borrower has requested, and Lender has agreed, (i) to consent to the transfer of the Mortgaged Property by Original Borrower to Borrower (the “**Transfer**”) as described in that certain Assumption and Release Agreement, dated of even date herewith, by and among Borrower, Lender, Original Borrower and other parties (the “**Assumption Agreement**”), and (ii) to approve the Operating Lease and the Management Agreement.

G. In connection with the Transfer, Lender and Borrower have amended the terms of the Original Loan Agreement pursuant to that certain First Amendment to Multifamily Loan and Security Agreement, dated as of even date herewith, between Lender and Borrower (the “**Loan Agreement Amendment**”; and together with the Original Loan Agreement, as amended, restated, replaced, supplemented or otherwise modified from time to time, collectively, the “**Loan Agreement**”). The Loan Agreement, the Note, the Security Instrument and all other documents executed in connection with the Mortgage Loan are hereafter the “**Loan Documents**.”

H. Lender requires and Property Operator is willing to subordinate its right, title and interest to and under the Facility Operating Agreement to the Loan Agreement and the Security Instrument and to assign all of its interest, as applicable, in Leases, Rents, Inventory, Contracts and Accounts to Lender as additional security for the Mortgage Loan.

I. Property Operator is willing to consent to this Assignment and attorn to Lender upon receipt of notice of the occurrence of an Event of Default (as hereinafter defined) by Borrower under the Loan Documents, to perform its obligations under the Facility Operating Agreement, and this Assignment for Lender, or its successors and assigns in interest, and to permit Lender to terminate the Facility Operating Agreement without liability.

#### **AGREEMENTS:**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Borrower, Lender and Property Operator agree as follows:

## **1. Definitions; Parties.**

(a) 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 following meanings:

**“CERCLA”** means the Federal Comprehensive Environmental Response, Compensation and Liability Act.

**“Event of Default”** means any Event of Default under the Loan Documents, including under this Assignment.

**“Facility Operating Agreement”** means, individually and collectively, any of an Operating Lease, sublease, Management Agreement or any other agreement setting forth the responsibilities for the operation, management, maintenance or administration of the Mortgaged Property as a Seniors Housing Facility, as identified in the Recitals.

**“Facility Operating Agreement Rent”** means any rent, fees or other sums due or to become due under a Facility Operating Agreement.

**“Goods”** means, in connection with the management or operation of the Mortgaged Property or located on the Mortgaged Property, the following: all 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; including 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); and any other equipment, supplies or furniture owned by Property Operator and leased to any third party service provider or any other 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.

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

**“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 all terms, conditions, provisions, requirements and affirmative and negative covenants of the Loan Documents relating to the use and operation of the Mortgaged Property, including all terms, conditions, provisions, requirements and affirmative and negative covenants set forth in the Loan Documents applicable to the organization, existence and good standing of a Property Operator necessary for the use and operation of the Mortgaged Property.

**“Personalty”** means all Goods, accounts, choses of 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 Property now or in the future, and all other intangible property and rights relating to the operation of, or used in connection with, the Mortgaged Property, including all governmental permits relating to any activities on the Mortgaged Property.

**“Post-Default Management Fees”** has the meaning as defined in Section 7 of this Assignment.

**“Property Operator”** has the meaning as defined in the Preamble above.

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

**“Third Party Payments”** means 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 Facility Operating Agreement, any of the Accounts, Contracts, 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.

(b) Any reference to Property Operator in this Assignment shall refer to Operator, Manager or any other entity responsible for the management and operation of the Mortgaged

Property under a Facility Operating Agreement and made a party hereto. Any assignment of Leases, Rents, Licenses, Personalty, Contracts, Third Party Payments and Accounts made by a Property Operator under this Assignment shall be to the extent such Property Operator has a present or hereinafter acquired interest in such Leases, Rents, Licenses, Personalty, Contracts, Third Party Payments and Accounts. Any representation, warranty or covenant made by a Property Operator under this Assignment shall be to the extent that such Property Operator has an interest in the subject Mortgaged Property or Facility Operating Agreement, as applicable. To the extent that a Property Operator does not have an interest in the Mortgaged Property or Facility Operating Agreement, any such representation, warranty or covenant shall not be applicable to such party.

## **2. Uniform Commercial Code Security Agreement.**

(a) To secure to Lender, the performance of the covenants and agreements of Property Operator contained in this Assignment, Property Operator hereby pledges, assigns, and grants to Lender a continuing security interest in the UCC Collateral. This Assignment constitutes a security agreement and a financing statement under the UCC. Property Operator 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 Property Operator. If an Event of 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 Property Operator and the secured party is Lender. The name and address of the debtor and secured party are set forth after Property Operator's signature below which are the addresses from which information on the security interest may be obtained.

(b) Property Operator represents and warrants that: (1) Property Operator maintains its chief executive office at the location set forth after Property Operator's signature below, and Property Operator will notify Lender in writing of any change in its chief executive office within five (5) days of such change; (2) Property Operator's state of incorporation, organization, or formation, if applicable, is as set forth on Page 1 of this Assignment; (3) Property Operator's exact legal name is as set forth on Page 1 of this Assignment; (4) Property Operator's organizational identification number, if applicable, is as set forth after Property Operator's signature below; (5) Property Operator is the owner of the UCC Collateral subject to no liens, charges or encumbrances other than the lien hereof; (6) 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 (7) no financing statement covering any of the UCC Collateral or any proceeds thereof is on file in any public office except pursuant hereto.



(c) All property of every kind acquired by Property Operator 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 Property Operator and without further conveyance or assignment become subject to the lien and security interest created by this Assignment. Nevertheless, Property Operator 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.

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

(a) As part of the consideration for Lender's approval of the Facility Operating Agreement and consenting to the Transfer, Property Operator absolutely and unconditionally assigns and transfers to Lender any interest it has in all Leases and Rents. It is the intention of Property Operator 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 Property Operator. Property Operator 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 Property Operator that in this circumstance this Assignment create and perfect a lien on Leases and Rents in favor of Lender to secure the obligations of Property Operator under this Assignment and Borrower's obligations under the Loan Documents, which lien shall be effective as of the date of this Assignment.

(b) Until an Event of Default has occurred and is continuing, but subject to the limitations set forth in this Assignment, Property Operator shall have a revocable license to exercise all rights, power and authority granted to Property Operator 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 Facility Operating Agreement 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 Event of Default has occurred and is continuing (and no event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing), the Rents remaining after application pursuant to the preceding sentence may be retained and distributed by Property Operator free and clear of, and released from, Lender's rights with respect to Rents under this Assignment.

(c) If an Event of 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 Property Operator pursuant to Section 3(b) shall automatically terminate, and Lender shall immediately have all rights, powers and authority granted to Property Operator 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 an Event of Default, Property Operator 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 Property Operator shall, upon Property Operator'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 an Event of Default, Lender may make demand for all Rents, and Lender may give, and Property Operator 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 an Event of Default, and no resident or tenant shall be obligated to pay to Property Operator 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.

(d) If an Event of 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 all Third Party Payments which would otherwise be paid to Property Operator to Lender, to the extent permitted by law.

(e) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Property Operator, and even in the absence of waste, enter upon, take and maintain full control of the Mortgaged Property, and may exclude Property Operator 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, at Lender's election), the making of repairs to the Mortgaged Property and the execution or termination 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.

(f) Notwithstanding any other right provided Lender under this Assignment or any other Loan Document, if an Event of Default has occurred and is continuing, and regardless of the adequacy of Lender's security or Property Operator's solvency, and without the necessity of giving prior notice (oral or written) to Property Operator, 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 Section 3(e). If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Property Operator, 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. Property Operator 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 Property Operator and its representatives from the Mortgaged Property.

(g) The acceptance by Lender of the assignments of the Leases and Rents pursuant to this Section 3 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 actual entry upon and taking possession and control of the Land and Improvements, Lender shall not be:

- (1) 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) obligated to appear in or defend any action or proceeding relating to any Lease or the Mortgaged Property; or
- (3) responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property.

The execution of this Assignment shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Property Operator, prior to such actual entry and taking possession and control by Lender of the Land and Improvements.

(h) Lender shall be liable to account only to Borrower and Property Operator and only for Rents actually received by Lender. Lender shall not be liable to Borrower or Property Operator, anyone claiming under or through Borrower, Property Operator or anyone having an interest in the Mortgaged Property by reason of any act or omission of Lender under this Section 3, and Borrower and Property Operator hereby releases and discharges 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 Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Assignment or any Loan Document.

(i) Borrower and Property Operator 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 into actual possession of the Land and Improvements.

#### **4. Assignment of Contracts and Management Agreement; Contracts Affecting the Mortgaged Property.**

(a) Property Operator has entered into the Contracts identified on Exhibit B for the provision of goods or services at or otherwise in connection with the operation, use or maintenance of the Mortgaged Property. Property Operator may in the future enter into Contracts for the provision of additional goods or services at or otherwise in connection with the operation, use or maintenance of the Mortgaged Property.

(b) As consideration for the material financial benefit to be derived by Property Operator from Lender's approval of the Facility Operating Agreement and consent to the Transfer, to the extent permitted by applicable law, Property Operator pledges, grants a security interest in and assigns to Lender all of Property Operator's right, title and interest, if any, in, to and under (1) the Contracts, including Property Operator's right, power and authority to modify the terms of, extend or terminate any such Contract, and (2) the Management Agreement. To the extent permitted by applicable law, it is the intention of Property Operator to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Property Operator's right, title and interest in, to and under the Contracts and the Management Agreement. To the extent permitted by applicable law, Property Operator and Lender intend this assignment of the Contracts and the Management Agreement to be immediately effective and to constitute an

absolute present assignment and not an assignment for additional security only. If this present, absolute and unconditional assignment of the Contracts or the Management Agreement is not enforceable by its terms under the laws of the Property Jurisdiction, then it is the intention of Property Operator that in this circumstance this Assignment create and perfect a lien on the Contracts and the Management Agreement in favor of Lender to secure the obligations of Property Operator under this Assignment and Borrower's obligations under the Loan Documents, which lien shall be effective as of the date of this Assignment. The acceptance by Lender of this assignment of the Contracts and the Management Agreement 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 expenses.

(c) Until Lender gives notice to Property Operator of Lender's exercise of its rights under this Section 4, Property Operator shall have all rights, power and authority granted to Property Operator under any Contract (except as otherwise limited by this Section 4 or any other provision of this Assignment), including the right, power and authority to modify the terms of any Contract or extend or terminate any Contract. If an Event of Default has occurred and is continuing, at the option of Lender, the permission given to Property Operator pursuant to the preceding sentence to exercise all rights, power and authority under Contracts shall terminate.

(d) Upon Lender's delivery of notice to Property Operator of an Event of Default, Lender shall immediately have all rights, powers and authority granted to Property Operator under any Contract and the Management Agreement, including the right, power and authority to modify the terms of, extend or terminate any such Contract or the Management Agreement.

## **5. Assignment of Licenses.**

As consideration for the material financial benefit to be derived by Property Operator from Lender's approval of the Facility Operating Agreement, to the extent permissible under applicable law and regulation, Property Operator pledges, grants a security interest in and assigns to Lender to secure Property Operator's obligations under this Assignment and Borrower's obligations under the Loan Documents all of Property Operator's right, title and interest, if any, in and to all Licenses and any other agreements or permits of any nature whatsoever now or hereafter obtained or entered into by Property Operator with respect to the occupancy, use, operation, maintenance and administration of the Mortgaged Property as a Seniors Housing Facility.

## **6. Subordination to Mortgage Lien.**

The Facility Operating Agreement is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of this Assignment, the Security Instrument and the other Loan Documents, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances heretofore made or which may hereafter be made

pursuant to the Security Instrument (including all sums advanced for the purposes of (a) 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 (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

#### **7. Property Operator Fee Subordination.**

If Property Operator is a Borrower Affiliate, Property Operator agrees that any fees payable to Property Operator by Borrower pursuant to the Facility Operating Agreement shall be subordinated in right to the prior payment in full of the Indebtedness. If Property Operator is not a Borrower Affiliate, Property Operator agrees that any fees payable to Property Operator by Borrower pursuant to the Facility Operating Agreement shall be subordinated in right of payment to the prior payment in full of monthly debt service and funding of escrows and reserves as required under the Loan Documents, and the payment of all operating expenses and capital expenditures incurred in connection with the operation and management of the Mortgaged Property. Notwithstanding anything in this Assignment to the contrary, to the extent following an Event of Default Manager continues to provide services under the Management Agreement, whether at Lender's request or as otherwise required under any applicable licensing or regulatory requirement, Lender shall pay Manager any management fees due under the Management Agreement that accrue after Manager has received notice of the Event of Default (the "**Post-Default Management Fees**").

#### **8. Operator Representations and Warranties.**

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

(a) Operator 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;

(b) the Facility Operating Agreement Terms set forth on Exhibit D are true and correct in all respects;

(c) the Operating Lease does not provide for free Facility Operating Agreement Rent, partial Facility Operating Agreement Rent, Facility Operating Agreement Rent concessions of any kind, the advance payment of Facility Operating Agreement Rent other than as set forth in Section 9(l), or Facility Operating Agreement Rent abatement or offsetting of Facility Operating Agreement Rent;

(d) no Facility Operating Agreement Rent has been paid for more than thirty (30) days in advance;

(e) all required payments of Facility Operating Agreement Rent, if any, have been made prior to the date hereof;

(f) Operator has fully inspected the Mortgaged Property and found the same to be as required by the Operating Lease in good order and repair, and all conditions and duties of an inducement nature under the Operating Lease to be performed by Borrower have been satisfied, including but not limited to payment to Operator of any Borrower contributions for improvements, completion by Borrower of the construction of any improvements to be constructed by Borrower, and payment to Operator of any consulting fees;

(g) Operator has no rights or options to purchase or first refusal or right of first offer under the Operating Lease or with respect to the Mortgaged Property or any part thereof, except as set forth on Exhibit D;

(h) Operator has not assigned or sublet and is now the sole owner of the interest or leasehold estate created by the Operating Lease;

(i) as of the date of this Assignment, to the best of Operator's knowledge, no party is in default under any of the terms, conditions, provisions or agreements of the Facility Operating Agreement and Operator has no offsets, claims or defenses against Borrower with respect to the Operating Lease, and Manager has no offsets, claims or defenses against Operator with respect to the Management Agreement;

(j) Operator has paid the Facility Operating Agreement Security Deposit set forth on Exhibit D to Borrower, if any;

(k) Operator has not executed any prior assignment of Leases and Rents;

(l) Operator does not and has not used the Mortgaged Property for the storage, treatment, manufacturing, generation, disposal or release into the environment of any petroleum product or substance which is classified as a hazardous substance, pollutant or contaminant under CERCLA or other applicable federal, state and local laws and regulations except for the safe and lawful use and storage of quantities of pre-packaged supplies, cleaning materials, petroleum products, and medical products and devices customarily used in the operation and maintenance of comparable Senior Housing Facilities;

(m) Operator has not filed and is not subject to any filing for bankruptcy or reorganization under any applicable bankruptcy or insolvency laws;

(n) Operator currently holds the Licenses identified on Exhibit C with regard to the Mortgaged Property, and is unaware of any other Licenses required to lawfully operate the Mortgaged Property as a Seniors Housing Facility. Each of the Licenses listed on Exhibit C

have been lawfully issued to Operator, are in full force and effect and no violations of record exist pertaining to any such License. The operations of the Mortgaged Property comply with the Licenses. There is no legal action pending or to the best of Operator's knowledge threatened which would adversely affect the Licenses or the operations at the Mortgaged Property. Operator is not currently operating under a consent order or decree, or any other agreement or decree mandated by the courts or a governmental entity that restricts or otherwise affects the operation of the Mortgaged Property;

(o) the terms of the Licenses set forth on Exhibit C are true and correct in all respects;

(p) Operator operates the Mortgaged Property as the type of facility described on Exhibit C pursuant to its Certificate of Occupancy and to its Licenses. The Certificate of Occupancy and Licenses are current and there are no violations of record. The operations at the Mortgaged Property comply with the terms and conditions of the Certificate of Occupancy and the Licenses. The Certificate of Occupancy has no termination date. The Licenses are valid and must be renewed for the period set forth on Exhibit C; if no regulatory or licensing requirements currently apply to the Mortgaged Property, as set forth on Exhibit C, Property Operator is in all respects legally authorized to operate and/or manage the Mortgaged Property as a Seniors Housing Facility under the applicable laws of the Property Jurisdiction without a License or operating certificate;

(q) foreclosure of the Mortgaged Property by Lender or any other transfer of the Mortgaged Property as a result of an Event of Default by Borrower under the Security Instrument will not result in a revocation, suspension or limitation of the Licenses;

(r) to the best of Operator's knowledge, there currently exist no grounds for the revocation, suspension or limitation of the Certificate of Occupancy or any of the Licenses for the Mortgaged Property;

(s) if Operator is a HIPAA Covered Entity, Property Operator has developed and implemented a HIPAA compliance plan (including providing a "Notice of Privacy Practices"), designated a privacy officer and otherwise achieved substantial compliance with HIPAA requirements, including those concerning privacy, breach notification, security and billing standards; and

(t) the Contracts to which Operator is a party are assignable and no previous assignment of Operator's interest in such Contracts has been made, and such Contracts are in full force and effect in accordance with their respective terms and there are no defaults thereunder.

## **9. Manager Representations and Warranties.**

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



- (a) Manager is managing the Mortgaged Property as a Seniors Housing Facility;
- (b) the Facility Operating Agreement Terms set forth on Exhibit D are true and correct in all respects with respect to the Management Agreement;
- (c) all required payments of Facility Operating Agreement Rent have been made prior to the date hereof with respect to the Management Agreement;
- (d) Manager has no rights or options to purchase or first refusal or right of first offer under the Management Agreement or with respect to the Mortgaged Property or any part thereof, except as set forth on Exhibit D;
- (e) Manager has not assigned and is now the sole owner of the interest created by the Management Agreement;
- (f) as of the date of this Assignment, to the best of Manager's knowledge, no party is in default under any of the terms, conditions, provisions or agreements of the Management Agreement and Manager has no offsets, claims or defenses against Operator with respect to the Management Agreement;
- (g) Manager has paid the Facility Operating Agreement Security Deposit set forth on Exhibit D to Borrower, if any, with respect to the Management Agreement;
- (h) Manager has not executed any prior assignment of Leases and Rents;
- (i) Manager does not and has not used the Mortgaged Property for the storage, treatment, manufacturing, generation, disposal or release into the environment of any petroleum product or substance which is classified as a hazardous substance, pollutant or contaminant under CERCLA or other applicable federal, state and local laws and regulations except for the safe and lawful use and storage of quantities of pre-packaged supplies, cleaning materials, petroleum products, and medical products and devices customarily used in the operation and maintenance of comparable Senior Housing Facilities;
- (j) Manager has not filed and is not subject to any filing for bankruptcy or reorganization under any applicable bankruptcy or insolvency laws;
- (k) The operations of the Mortgaged Property comply with the Licenses. There is no legal action pending or to the best of Manager's knowledge threatened which would adversely affect the Licenses or the operations at the Mortgaged Property;
- (l) Manager manages the Mortgaged Property as the type of facility described on Exhibit C pursuant to its Certificate of Occupancy and to its Licenses. The operations at the

Mortgaged Property comply with the terms and conditions of the Certificate of Occupancy and the Licenses;

(m) to the best of Manager's knowledge, there currently exist no grounds for the revocation, suspension or limitation of the Certificate of Occupancy or any of the Licenses for the Mortgaged Property;

(n) if Manager is a HIPAA Covered Entity, Manager has developed and implemented a HIPAA compliance plan (including providing a "**Notice of Privacy Practices**"), designated a privacy officer and otherwise achieved substantial compliance with HIPAA requirements, including those concerning privacy, breach notification, security and billing standards; and

(o) the Contracts to which Manager is a party are assignable and no previous assignment of Manager's interest in such Contracts has been made, and such Contracts are in full force and effect in accordance with their respective terms and there are no defaults thereunder.

#### **10. Operator Covenants.**

Operator covenants with Lender that during the term of this Assignment:

(a) Operator shall not transfer the responsibility for the operation and management of the Mortgaged Property or the Licenses, including, permitting the Transfer of a direct or indirect Controlling Interest in Operator, to any other person or entity without the prior written consent of Lender, or change its name, change its jurisdiction or organization, or cause or permit a conversion of Operator from one type of entity into another type of entity without Lender's prior written consent, which consent will not be unreasonably withheld provided that any such change does not invalidate any of the Licenses;

(b) Operator will cooperate with Lender, including attendance at any meetings requested by Lender (after reasonable prior notice), furnishing financial statements of Operator (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;

(c) Operator acknowledges that it has received from Borrower and reviewed a fully executed copy of the Loan Agreement, the Security Instrument and the Environmental Indemnity Agreement and covenants therein and agrees to 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 such escrows and provision of insurance coverage is required of Operator under the Operating Lease. In the event Operator fails to so use and operate the Mortgaged Property according to the Operating Covenants, Lender shall have the right to enforce the Operating Covenants directly against Operator upon Borrower's failure to do so, in accordance with the provisions of the Security Instrument, the Loan Agreement and this

Assignment. The parties agree that Operator's failure to comply with the Operating Covenants and its other obligations under this Assignment shall constitute an Event of Default hereunder;

(d) if (1) Operator fails to perform any of its obligations under this Assignment or causes a default under the Facility Operating Agreement, or (2) any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security, rights or interests under the Loan Agreement or 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 bankrupt 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 Operator and to protect the Mortgaged Property, Lender's security, rights or interest, including (A) payment of fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, (B) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (C) procurement of the insurance required by the Loan Agreement and (D) payment of any amounts required under this Assignment, the Loan Agreement, or the Facility Operating Agreement which Operator has failed to pay. Any amounts disbursed by Lender under this Section 10, or under any other provision of this Assignment that treats such disbursement as being made under this Section 10, due to Operator's failure to perform its obligations, shall be immediately due and payable to Lender from Operator. The foregoing provisions shall not require Lender to incur any expense or take any action;

(e) if, by reason of its exercise of any right or remedy under the Facility Operating Agreement, Operator acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) 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;

(f) until Operator receives notice (or otherwise acquires actual knowledge) of an Event of Default, Operator shall be entitled to retain for its own account any payments or fees made pursuant to the Facility Operating Agreement, subject to the terms of this Assignment, provided that if Operator is an Affiliated Operator, notice to Borrower of an Event of Default shall be deemed to be notice to Operator for purposes of this provision;

(g) after Operator or Borrower receives notice (or otherwise acquires actual knowledge) of an Event of Default, Operator will not accept or retain any payments or fees made pursuant to the Facility Operating Agreement without Lender's prior written consent;

(h) if, after Operator or Borrower receives notice (or otherwise acquires actual knowledge) of an Event of Default, Operator receives any payments or fees pursuant to the Facility Operating Agreement other than from Lender, or if Operator receives any other payment or distribution of any kind from Borrower or from any other person or entity other than from

Lender in connection with the Facility Operating Agreement which Operator 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 unless Lender otherwise notifies Operator, will be 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. Operator hereby irrevocably designates, makes, constitutes and appoints Lender (and all persons or entities designated by Lender) as Operator's true and lawful attorney in fact with power to endorse the name of Operator upon any checks representing payments referred to in this subsection;

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

(j) Operator will 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;

(k) Operator will 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. 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 Operator's ability to conduct its daily business or threatens to materially or adversely damage its property located on the Mortgaged Property, Operator shall be permitted to exercise its rights under the Operating Lease;

(l) Operator will not pay Facility Operating Agreement 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;

(m) Operator will 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 will execute such estoppel certificates and subordination agreements as Lender shall reasonably require;

(n) Operator shall not create, incur, assume or suffer to exist 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, including the Leases, Rents and Contracts;

(o) Operator shall not without the prior written consent of Lender (1) terminate, amend or modify any of the terms or provisions of the Facility Operating Agreement, (2) assign its rights under the Facility Operating Agreement, (3) in connection with any Facility Operating Agreement that is a master lease covering more than one property, add or release any property subject to the Facility Operating Agreement, or (4) transfer the Facility Operating Agreement. Within five (5) days of Operator's receipt, Operator shall give Lender written notice of any notice or information that Operator receives which indicates that any party (A) is in default under the terms of the Facility Operating Agreement, (B) is amending, modifying or terminating the Facility Operating Agreement or (C) is otherwise discontinuing its operation and management of the Mortgaged Property;

(p) Operator will comply in all respects with its obligations under the Facility Operating Agreement;

(q) Operator shall 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 Operator'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 Property Operator that (1) Operator is being placed under regulatory supervision, (2) any License, permit, charter, membership or registration material to the conduct of Operator's business or the Mortgaged Property is to be suspended or revoked or (3) Operator is to cease and desist any practice, procedure or policy employed by Operator 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;

(r) Operator will not use the Mortgaged Property for the storage, treatment, manufacturing, generation, disposal or release into the environment of any petroleum product or substance which is classified as a hazardous substance, pollutant or contaminant under CERCLA or other applicable federal, state and local laws and regulations except for the safe and lawful use and storage of quantities of pre-packaged supplies, cleaning materials, petroleum products, and medical products and devices customarily used in the operation and maintenance of comparable Senior Housing Facilities;

(s) Operator shall not look to Lender, any mortgagee in possession, or successor in title to the Mortgaged Property for accountability for any security deposit or other deposit held by Borrower;

(t) Operator shall fully perform all of its obligations under the Contracts, and Operator shall not amend, modify, assign, sell, pledge, transfer, mortgage or otherwise encumber its interests in any of the Contracts so long as this Assignment is in effect, or consent to any transfer, assignment or other disposition thereof without the written approval of Lender. Each Contract entered into by Operator subsequent to the date hereof, the average annual consideration of which, directly or indirectly, is at least \$20,000, shall provide: (1) that it shall be terminable for cause; and (2) that it shall be terminable, at Lender's option, upon the occurrence and continuance of an Event of Default;

(u) If no regulatory or licensing requirements currently apply to the Mortgaged Property and Operator is in all respects legally authorized to operate the Mortgaged Property as a Seniors Housing Facility without a License as of the date hereof as set forth on Exhibit C, and if any licensing or similar regulatory requirement is imposed upon or otherwise becomes applicable to the Mortgaged Property, Operator shall obtain all Licenses required to lawfully operate the Mortgaged Property as a Seniors Housing Facility or shall ensure such licenses are obtained, and notify Loan Servicer of such licensing requirements, and shall maintain such Licenses in full force and effect, or shall ensure such Licenses are maintained in full force and effect;

(v) Neither Borrower nor Operator shall (A) during the period beginning on the Effective Date and continuing until the last day of September, 2012, permit more than sixty percent (60%) of the Mortgaged Property's effective gross income to be derived from units relying on Medicaid payments, (B) during the period beginning on the first day of October, 2012 and continuing until the last day of March, 2013, permit more than fifty-five percent (55%) of the Mortgaged Property's effective gross income to be derived from units relying on Medicaid payments, and (C) from and after the first day of April, 2013, permit more than fifty percent (50%) of the Mortgaged Property's effective gross income to be derived from units relying on Medicaid payments. If Borrower or Operator is a Medicaid Participant as of the date hereof, Borrower and Operator shall execute the form of Medicaid reserve agreement and depositary agreement as Lender may require. If Borrower or Operator become a Medicaid Participant after the date hereof, Borrower and Operator shall execute the form of Medicaid reserve agreement and depositary agreement as Lender may require;

(w) Operator covenants and agrees that it will not perform any acts and has not executed, and shall not execute any instrument which would prevent Lender from exercising its rights under this Assignment;

(x) if Operator is a HIPAA Covered Entity, Operator shall at all times remain in substantial compliance with HIPAA requirements, including those concerning privacy, breach notification, security and billing standards.

## **11. Manager Covenants.**

Manager covenants with Lender that during the term of this Assignment:

(a) Manager shall not transfer the responsibility for the management of the Mortgaged Property to any other person or entity without the prior written consent of Lender, which consent will not be unreasonably withheld provided that any such change does not invalidate any of the Licenses;

(b) Manager will cooperate with Lender, including attendance at any meetings requested by Lender (after reasonable prior notice), furnishing financial statements of Manager (in connection with the management of the Mortgaged Property) and operating statements for the Mortgaged Property, and allowing Lender to undertake inspections of the Mortgaged Property;

(c) Manager acknowledges that it has received from Operator and reviewed a fully executed copy of the Loan Agreement, the Security Instrument and the Environmental Indemnity Agreement and covenants therein and agrees to 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 such escrows and provision of insurance coverage is required of Manager under the Management Agreement. In the event Manager fails to so use and operate the Mortgaged Property according to the Operating Covenants, Lender shall have the right to enforce the Operating Covenants directly against Manager upon Operator's failure to do so, in accordance with the provisions of the Security Instrument, the Loan Agreement and this Assignment. The parties agree that Manager's failure to comply with the Operating Covenants and its other obligations under this Assignment shall constitute an Event of Default hereunder;

(d) if (1) Manager fails to perform any of its obligations under this Assignment or causes a default under the Management Agreement, or (2) any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security, rights or interests under the Loan Agreement or 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 bankrupt 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 Manager and to protect the Mortgaged Property, Lender's security, rights or interest, including (A) payment of fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, (B) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (C) procurement of the insurance required by the Loan Agreement and (D) payment of any amounts required under this Assignment, the Loan Agreement, or the Management Agreement which Manager has failed to pay. Any amounts disbursed by Lender under this Section 11, or under any other provision of this Assignment that treats such disbursement as being made under this Section 11, due to Manager's failure to perform its obligations, shall be immediately due and payable to Lender

from Manager. The foregoing provisions shall not require Lender to incur any expense or take any action;

(e) if, by reason of its exercise of any right or remedy under the Management Agreement, Manager acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) 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;

(f) until Manager receives notice (or otherwise acquires actual knowledge) of an Event of Default, Manager shall be entitled to retain for its own account any payments or fees made pursuant to the Management Agreement, subject to the terms of this Assignment, provided that if Manager is an Affiliated Manager, notice to Borrower of an Event of Default shall be deemed to be notice to Manager for purposes of this provision;

(g) after Manager or Borrower receives notice (or otherwise acquires actual knowledge) of an Event of Default, Manager will not accept or retain any payments or fees (other than Post Default Manager Fees, if any) made pursuant to the Management Agreement without Lender's prior written consent;

(h) if, after Manager or Borrower receives notice (or otherwise acquires actual knowledge) of an Event of Default, Manager receives any payments or fees pursuant to the Management Agreement other than from Lender, or if Manager receives any other payment or distribution of any kind from Operator or from any other person or entity other than from Lender in connection with the Management Agreement which Manager 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 unless Lender otherwise notifies Manager, will be 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. Manager hereby irrevocably designates, makes, constitutes and appoints Lender (and all persons or entities designated by Lender) as Manager's true and lawful attorney in fact with power to endorse the name of Manager upon any checks representing payments referred to in this subsection;

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

(j) Manager will 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 Management Agreement;



(k) Manager will not seek to terminate the Management Agreement by reason of any default of Operator without prior written notice to Lender and the lapse of such time as was offered to Operator under the Management Agreement 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 Operator under the Management Agreement 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. Notwithstanding the foregoing, in the event either Lender or Borrower do not cure or commence curing such default within the time provided to Operator under the Management Agreement and the nature of the default threatens Manager's ability to conduct its daily business or threatens to materially or adversely damage its property located on the Mortgaged Property, Manager shall be permitted to exercise its rights under the Management Agreement;

(l) Manager will 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 Operator then exists under the Management Agreement and will execute such estoppel certificates and subordination agreements as Lender shall reasonably require;

(m) Manager shall not create, incur, assume or suffer to exist 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, including the Leases, Rents and Contracts;

(n) Manager shall not without the prior written consent of Lender (1) terminate, amend or modify any of the terms or provisions of the Management Agreement, (2) assign its rights under the Management Agreement, or (3) transfer the Management Agreement. Within five (5) days of Manager's receipt, Manager shall give Lender written notice of any notice or information that Manager receives which indicates that any party (A) is in default under the terms of the Management Agreement, (B) is amending, modifying or terminating the Management Agreement or (C) is otherwise discontinuing its management of the Mortgaged Property;

(o) Manager will comply in all respects with its obligations under the Management Agreement;

(p) Manager shall 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 Manager's ability to manage the Mortgaged Property or on the Mortgaged Property itself; the receipt of notice from any Governmental Authority having

jurisdiction over Manager that (1) Manager is being placed under regulatory supervision, (2) any License, permit, charter, membership or registration material to the conduct of Manager's business or the Mortgaged Property is to be suspended or revoked or (3) Manager is to cease and desist any practice, procedure or policy employed by Manager 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;

(q) Manager will not use the Mortgaged Property for the storage, treatment, manufacturing, generation, disposal or release into the environment of any petroleum product or substance which is classified as a hazardous substance, pollutant or contaminant under CERCLA or other applicable federal, state and local laws and regulations except for the safe and lawful use and storage of quantities of pre-packaged supplies, cleaning materials, petroleum products, and medical products and devices customarily used in the operation and maintenance of comparable Senior Housing Facilities;

(r) Manager shall not look to Lender, any mortgagee in possession, or successor in title to the Mortgaged Property for accountability for any security deposit or other deposit held by Operator, if any;

(s) Manager shall fully perform all of its obligations under the Contracts, and Manager shall not amend, modify, assign, sell, pledge, transfer, mortgage or otherwise encumber its interests in any of the Contracts so long as this Assignment is in effect, or consent to any transfer, assignment or other disposition thereof without the written approval of Lender. Each Contract entered into by Manager subsequent to the date hereof, the average annual consideration of which, directly or indirectly, is at least \$20,000, shall provide: (1) that it shall be terminable for cause; and (2) that it shall be terminable, at Lender's option, upon the occurrence and continuance of an Event of Default;

(t) If no regulatory or licensing requirements currently apply to the Mortgaged Property and Manager is in all respects legally authorized to manage the Mortgaged Property as a Seniors Housing Facility without a License as of the date hereof as set forth on Exhibit C, and if any licensing or similar regulatory requirement is imposed upon or otherwise becomes applicable to the Mortgaged Property and Manager, Manager shall obtain all Licenses required to lawfully manage the Mortgaged Property as a Seniors Housing Facility or shall ensure such licenses are obtained, and notify Loan Servicer of such licensing requirements, and shall maintain such Licenses in full force and effect, or shall ensure such Licenses are maintained in full force and effect;

(u) Manager shall not (A) during the period beginning on the Effective Date and continuing until the last day of September, 2012, permit more than sixty percent (60%) of the Mortgaged Property's effective gross income to be derived from units relying on Medicaid payments, (B) during the period beginning on the first day of October, 2012 and continuing until

the last day of March, 2013, permit more than fifty-five percent (55%) of the Mortgaged Property's effective gross income to be derived from units relying on Medicaid payments, and (C) from and after the first day of April, 2013, permit more than fifty percent (50%) of the Mortgaged Property's effective gross income to be derived from units relying on Medicaid payments. If Manager is a Medicaid Participant as of the date hereof, Manager shall execute the form of Medicaid reserve agreement and depositary agreement as Lender may require. If Manager becomes a Medicaid Participant after the date hereof, Manager shall execute the form of Medicaid reserve agreement and depositary agreement as Lender may require;

(v) Manager covenants and agrees that it will not perform any acts and has not executed, and shall not execute any instrument which would prevent Lender from exercising its rights under this Assignment;

(w) if Manager is a HIPAA Covered Entity, Manager shall at all times remain in substantial compliance with HIPAA requirements, including those concerning privacy, breach notification, security and billing standards.

## **12. Events of Default; Remedies.**

(a) The occurrence of any one or more of the following shall constitute an Event of Default under this Assignment: (1) a default, a breach of a covenant or a failure to perform any obligation under this Assignment; (2) the failure of any representation or warranty in this Assignment to be true and correct when made; (3) any "Event of Default" listed in Section 14.01 of the Loan Agreement; or (4) a default by Borrower or Operator under the Operating Lease or the Management Agreement. Borrower and Operator hereby acknowledge that any default by Borrower or Operator under this Assignment, the Operating Lease or the Management Agreement which continues beyond any applicable cure period shall constitute an Event of Default hereunder and under the Loan Agreement. Borrower and Manager hereby acknowledge that any default by Manager under this Assignment which continues beyond any applicable cure period shall constitute an Event of Default hereunder and under the Loan Agreement.

(b) Upon receipt by Property Operator of written notice from Lender that an Event of Default has occurred under the Loan Documents, Lender shall have the right to exercise all rights as owner of the Mortgaged Property under the Facility Operating Agreement, and Property Operator shall pay to Lender directly all Rents and other sums due under the Facility Operating Agreement. Lender shall be entitled to mandate the use of a lockbox bank account or other depositary account, to be maintained under the control and supervision of Lender, for all income of the Mortgaged Property, including but not limited to Rent, service charges, insurance payments and Third Party Payments. In order to induce Lender to lend funds under the Loan Agreement and approve the Facility Operating Agreement, Borrower and Property Operator hereby agree that at the option of Lender upon the occurrence of an Event of Default, Property Operator shall continue to provide all necessary services required under any applicable licensing

or regulatory requirements. Property Operator agrees to fully cooperate with Lender and any receiver as may be appointed by a court, in performing these services until such time as Lender has arranged for a replacement provider of the necessary services, and in arranging an orderly transition of operating and management responsibilities to the receiver or a replacement provider of the necessary services. Borrower and Property Operator agree to cooperate with Lender in arranging an orderly transfer to a replacement Property Operator of all Licenses and governmental approvals necessary or reasonably required to operate the Mortgaged Property as a Seniors Housing Facility, and to execute promptly all applications, assignments, consents and documents requested by Lender to facilitate such transition.

(c) If an Event of Default has occurred and is continuing, Lender shall have the right any time thereafter to terminate the Facility Operating Agreement without cause and without liability by giving written notice to Property Operator 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 (1) supersede any limitation on termination rights contained in the Facility Operating Agreement, (2) serve as consideration for the material benefit derived by Property Operator from Lender's approval of the Facility Operating Agreement and the making of the Mortgage Loan, and (3) become effective pursuant to Lender's right after an Event of Default occurs and continues to exercise all rights of Borrower and/or Operator under the Facility Operating Agreement, as the case may be.

(d) On the effective date of termination of the Facility Operating Agreement, Property Operator 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 Property Operator, at Property Operator'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 Property Operator under the Facility Operating Agreement shall be made within sixty (60) days after the effective date of termination, but Lender shall not have any liability or obligation to Property Operator for unpaid fees or other amounts payable under the Facility Operating Agreement (other than with respect to Post-Default Manager Fees, if any) which accrue before Lender acquires title to the Mortgaged Property, or before Lender becomes a mortgagee in possession.

(e) If an Event of Default has occurred and is continuing, Property Operator will furnish promptly to Lender evidence of deposits and withdrawals from any account held or controlled by Property Operator relating to the Mortgaged Property.

(f) If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Assignment or existing under applicable law. In exercising any remedies,

Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies.

(g) From and after the occurrence of an Event of Default, Lender or its designee may (in Lender's sole discretion) terminate Property Operator's authority to collect Accounts and notify the residents and account debtors that the Accounts have been assigned to Lender and, either in its own name or that of Property Operator, or both, demand, collect (including, without limitation, through any lockbox arrangement prescribed by Lender), receive, receipt for, sue for or give acquittance for any or all amounts due or to become due in respect of the Accounts, and may also, in its discretion, file any claim, institute any proceeding or take any other action that Lender may deem necessary or appropriate to protect and realize upon the security interest of Lender in the Accounts. All of Lender's collection expenses shall be charged to Borrower's account and added to the Indebtedness. If Lender is collecting the Accounts as above provided, Lender shall have the right to receive, endorse, assign and deliver in Lender's name or Property Operator's name any and all checks, drafts and other instruments for the payment of money relating to the Accounts, and Property Operator hereby waives notice of presentment, protest and non-payment of any instrument so endorsed. If Lender is collecting the Accounts directly as above provided, Property Operator hereby constitutes Lender or Lender's designee as Property Operator's attorney-in-fact with power with respect to the Accounts to: (1) endorse Property Operator's name upon all notes, acceptances, checks, drafts, money orders or other evidences of payment that may come into Lender's possession; (2) notify the U.S. Post Office to change the address for delivery of mail addressed to Property Operator for the Mortgaged Property to such address as Lender may designate; and (3) receive, open and dispose of all such mail addressed to Property Operator.

(h) If an Event of 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 an Event of 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, Property Operator shall, upon Lender's demand, promptly assemble the Personalty and make it available to Lender at the Mortgaged Property.

**13. No Assumption of Obligations.**

Borrower and Property Operator, by executing this Assignment, agree that Lender does not assume any obligations or duties of Borrower and Property Operator concerning the Facility Operating Agreement until and unless Lender shall exercise its rights hereunder.

**14. Power of Attorney.**

Borrower and Property Operator hereby irrevocably constitute and appoint Lender as Borrower's and Property Operator'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 Property Operator's behalf and to do any and all acts in Borrower's or Property Operator's names or in the name of Lender with the same force and effect as Borrower or Property Operator could do if this Assignment had not been made. The foregoing appointment shall be deemed to be coupled with an interest and irrevocable.

**15. Consideration.**

As consideration for the material financial benefit to be derived by Property Operator and Borrower as a result of Lender's approval of the Facility Operating Agreement and providing the Mortgage Loan to Borrower, Property Operator and Borrower acknowledge receipt of good and valuable consideration for Property Operator's and Borrower's entry into this Assignment.

**16. 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 Property Operator.

**17. Lender Requests.**

Within ten (10) days of written request of Lender, Property Operator will promptly furnish to Lender copies of all Leases, Contracts, Licenses, 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 Property Operator is required to maintain or otherwise maintains under the Facility Operating Agreement or which Property Operator maintains for its own purposes with respect to the Mortgaged Property.

**18. Notice.**

**(a) Process of Serving Notice.**

All notices under this Assignment shall be:

- (1) in writing and shall be:
  - (A) delivered, in person;
  - (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
  - (C) sent by overnight courier; or
  - (D) 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.

**(b) 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 18.

**(c) 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 18.

**(d) Receipt of Notices.**

Borrower, Property Operator 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.

**19. 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.

**20. Governing Law.**

(a) This Assignment shall be governed by and construed in accordance with the laws of the Property Jurisdiction, and applicable federal law.

(b) Property Operator and Borrower agree that any controversy arising under or in relation to this Assignment shall be litigated exclusively in the Property Jurisdiction and Property Operator and Borrower irrevocably consent to service, jurisdiction, and venue of such course for any such litigation and waive any other venue to which Property Operator or Borrower might be entitled by virtue of domicile, habitual residence or otherwise.

**21. Successors and Assigns.**

This Assignment shall be binding upon Borrower, Property Operator 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 Property Operator shall not assign any of their respective rights and obligations under this Assignment without the prior written consent of Lender.

**22. 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.

**23. Relationship of Parties.**

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



## **24. 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.

## **25. Construction.**

(a) The captions and headings of the sections of this Assignment are for convenience only and shall be disregarded in construing this Assignment.

(b) 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.

(c) 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.

(d) Use of the singular in this Assignment includes the plural and use of the plural includes the singular.

(e) 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.

(f) Whenever Borrower's or Property Operator's knowledge is implicated in this Assignment or the phrase "to Borrower's knowledge," "to Property Operator's knowledge" or a similar phrase is used in this Assignment, Borrower's or Property Operator's knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower's or Property Operator's knowledge after reasonable and diligent inquiry and investigation.

(g) 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.

(h) 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.

(i) "Lender may" shall mean at Lender's discretion, but shall not be an obligation.

**[Remainder of Page Intentionally Blank]**

IN WITNESS WHEREOF, Borrower, Lender, Operator and Manager have executed this Assignment as of the day and year first written above.

**BORROWER:**

ARHC PPKLAOR01, LLC,  
a Delaware limited liability company

By: [Signature] (SEAL)  
Name: Jesse C. Galloway  
Title: Authorized Signatory

Address: c/o American Realty Capital  
405 Park Avenue, 12<sup>th</sup> Floor  
New York, New York 10022  
Attention: Edward M. Weil, Jr.

With a copy to:

c/o American Realty Capital  
405 Park Avenue, 12<sup>th</sup> Floor  
New York, New York 10022  
Attention: Jesse C. Galloway, Jr.

STATE OF New York )  
COUNTY OF New York ) ss:

This instrument was acknowledged before me on March 25, 2013, by Jesse Galloway, as the Authorized Signatory of ARHC PPKLAOR01, LLC, a Delaware limited liability company.

STEPHANIE ALISON LEAL  
Notary Public, State of New York  
No. 01LE6268688  
Qualified in Kings County  
Commission Expires Sept. 17, 2016

[Signature]  
Notary Public

My commission expires: 9/17/16

Subordination, Assignment and Security  
Agreement (Borrower and Property  
Operator) (Seniors Housing)  
Fannie Mae

Form 6446.SRS  
12-12

Page S-1  
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**LENDER:**

FANNIE MAE, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. Section 1716 et seq. and duly organized and existing under the laws of the United States

By: RED MORTGAGE CAPITAL, LLC, a Delaware limited liability company, as its Attorney-in Fact

By: Cherie B Hartsough (SEAL)  
Name: Cherie B. Hartsough  
Title: Vice President

The name and chief executive office of Lender (as Secured Party) are:

Secured Party Name: Fannie Mae

Secured Party Chief Executive Office Address:  
c/o Red Mortgage Capital, LLC  
Two Miranova Place, 12<sup>th</sup> Floor  
Columbus, OH 43215

STATE OF OHIO                     )  
  ) ss:  
COUNTY OF FRANKLIN        )

This instrument was acknowledged before me on March 22, 2013, by Cherie B. Hartsough, as the Vice President of RED MORTGAGE CAPITAL, LLC, a Delaware limited liability company, as Attorney-in-Fact for FANNIE MAE.

Noelle M Bartrum  
Notary Public

My commission expires: 10-3-17



Noelle M. Bartrum  
Notary Public, State of Ohio  
My Commission Expires 10-3-2017

**Subordination, Assignment and Security  
Agreement (Borrower and Property  
Operator) (Seniors Housing)  
Fannie Mae**

**Form 6446.SRS  
12-12**

**Page S-2  
© 2012 Fannie Mae**

**OPERATOR:**

ARHC PPKLAOR01 TRS, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_ (SEAL)  
Name: Jesse C. Galloway  
Title: Authorized Signatory

The name, chief executive office and organizational identification number of Operator (as Debtor under any applicable Uniform Commercial Code) are:

Debtor Name/Record Owner:  
ARHC PPKLAOR01 TRS, LLC

Address: c/o American Realty Capital  
405 Park Avenue, 12<sup>th</sup> Floor  
New York, New York 10022  
Attention: Edward M. Weil, Jr.

With a copy to:

c/o American Realty Capital  
405 Park Avenue, 12<sup>th</sup> Floor  
New York, New York 10022  
Attention: Jesse C. Galloway, Jr.

Debtor Organizational ID Number: 5238374

STATE OF New York  
COUNTY OF New York ) ss:

This instrument was acknowledged before me on March 25, 2013, by Jesse Galloway, as the Authorized Signatory of ARHC PPKLAOR01 TRS, LLC, a Delaware limited liability company.

Stephanie Leal  
Notary Public

My commission expires: 9/17/16

STEPHANIE ALISON LEAL  
Notary Public, State of New York  
No. 01LE6268688  
Qualified in Kings County  
Commission Expires Sept. 17, 2016

**MANAGER:**

FM PELICAN LLC,  
an Oregon limited liability company

By: [Signature] (SEAL)  
Name: Greg Roderick  
Title: MANAGER

The name, chief executive office and organizational identification number of Manager (as Debtor under any applicable Uniform Commercial Code) are:

Debtor Name/Record Owner:  
FM PELICAN LLC

Debtor Chief Executive Office Address:  
c/o Gregory Roderick, Manager  
17400 SW Upper Boones Ferry Rd., Suite 230  
Durham, OR 97224

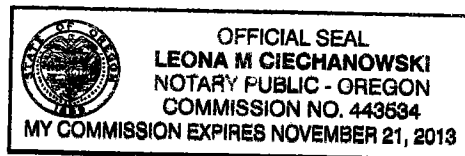
Debtor Organizational ID Number: 916534-94

STATE OF OREGON )  
 ) ss:  
COUNTY OF WASHINGTON

This instrument was acknowledged before me on 3-25, 2013, by GREGORY RODERICK, as the Authorized Signatory of FM PELICAN, LLC, an Oregon limited liability company.

Leona M. Ciechanowski  
Notary Public

My commission expires: 11/21/2013



Subordination, Assignment and Security  
Agreement (Borrower and Property  
Operator) (Seniors Housing)  
Fannie Mae

Form 6446.SRS  
12-12

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**EXHIBIT A**  
**TO SUBORDINATION, ASSIGNMENT AND SECURITY AGREEMENT**  
**Legal Description**

**LEGAL DESCRIPTION:** Real property in the County of Klamath, State of Oregon, described as follows:

**PARCEL 1:**

THAT PORTION OF TRACT 40B LYING SOUTH AND WESTERLY OF THE U.S.B.R. "A" CANAL AND EASTERLY OF WASHBURN WAY AND ALL OF TRACT 40C, ENTERPRISE TRACTS, IN THE COUNTY OF KLAMATH, STATE OF OREGON. EXCEPTING THEREFROM THAT PORTION DEEDED TO KLAMATH COUNTY IN VOLUME 335, PAGE 87, AND PARCEL DEEDED TO UNITED STATE OF AMERICA FOR CANALS AND LATERALS RECORDED JUNE 25, 1909 IN VOLUME 27, PAGE 236 AND IN VOLUME 38, PAGES 209 AND 210, ALL DEED RECORDS OF KLAMATH COUNTY, OREGON, AND THAT PORTION OF TRACT 40C DESCRIBED AS FOLLOWS:  
BEGINNING AT A ONE-HALF INCH IRON PIN ON THE EAST RIGHT OF WAY LINE OF WASHBURN WAY, SAID POINT BEING NORTH 00° 20' 00" EAST ALONG THE CENTERLINE OF WASHBURN WAY AND ALONG THE WEST LINE OF SECTION 34 A DISTANCE OF 332.19 FEET AND SOUTH 89° 33' 03" EAST A DISTANCE OF 30.00 FEET FROM THE 5/8 INCH IRON PIN MARKING THE WEST ONE-QUARTER CORNER OF SECTION 34; THENCE NORTH 00° 20' 00" EAST ALONG THE EAST RIGHT OF WAY LINE OF WASHBURN WAY A DISTANCE OF 285.00 FEET TO A ONE-HALF INCH IRON PIN; THENCE SOUTH 89° 33' 03" EAST PARALLEL WITH THE NORTH LINE OF "MILLS GARDEN" SUBDIVISION A DISTANCE OF 472.43 FEET TO A ONE-HALF INCH IRON PIN; THENCE CONTINUING SOUTH 89° 33' 03" EAST A DISTANCE OF 29 FEET MORE OR LESS, TO THE WESTERLY RIGHT OF WAY LINE OF THE U.S.B.R. "A" CANAL; THENCE SOUTHEASTERLY ALONG SAID WESTERLY LINE IN THE NORTH LINE OF "MILLS GARDEN" SUBDIVISION; THENCE NORTH 89° 33' 03" WEST ALONG THE NORTH LINE OF "MILLS GARDEN" (SOUTH 89° 45' WEST BY SAID SUBDIVISION PLAT) A DISTANCE OF 20.96 FEET, MORE OR LESS, TO A TWO-INCH IRON PIPE; THENCE CONTINUING NORTH 89° 33' 03" WEST ALONG SAID SUBDIVISION LINE A DISTANCE OF 606.40 FEET TO THE POINT OF BEGINNING.  
ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF WASHBURN WAY.

**PARCEL 2:**

A TRACT OF LAND SITUATED IN TRACTS 40B AND 40C, ENTERPRISE TRACTS, IN THE NW 1/4 OF SECTION 34, TOWNSHIP 38 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF KLAMATH, STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
BEGINNING AT AN IRON PIN LOCATED NORTH 0 DEGREES 24' WEST A DISTANCE OF 792.2 FEET FROM THE TWO-INCH PIPE MARKING THE INITIAL POINT OF "MILLS GARDENS" SUBDIVISION, SAID INITIAL POINT BEING NORTH 0 DEGREES 24' WEST A DISTANCE OF 15.0 FEET AND NORTH 89 DEGREES 45' EAST A DISTANCE OF 30.0 FEET FROM THE WEST QUARTER CORNER OF SAID SECTION 34 ACCORDING TO THE OFFICIALLY RECORDED PLAT OF SAID "MILLS GARDENS" SUBDIVISION; THENCE NORTH 0 DEGREES 24' WEST A DISTANCE OF 85.0 FEET TO AN IRON PIN; THENCE



**NORTH 89 DEGREES 36' EAST A DISTANCE OF 100.0 FEET TO AN IRON PIN; THENCE  
SOUTH 0 DEGREES 24' EAST A DISTANCE OF 85.0 FEET TO AN IRON PIN; THENCE  
SOUTH 89 DEGREES 36' WEST A DISTANCE OF 100.0 FEET, MORE OR LESS, TO THE  
POINT OF BEGINNING.  
EXCEPT THEREFROM THAT PORTION LYING WITHIN THE BOUNDARIES OF WASHBURN  
WAY.**

**EXHIBIT B**  
**TO SUBORDINATION, ASSIGNMENT AND SECURITY AGREEMENT**  
**Contracts**

Sprague Pest Control  
OHSU Continuing Education Contract  
Netflix Contract  
Medibag Contract  
Leap Program Agreement  
Wet-N-Wild Landscape Service Agreement  
Salem Fire Alarm Agreement  
Otis Elevator Agreement  
IKON Copier Lease Agreement  
Carter-Jones Collections Service, Inc. Agreement  
Charter Cable Agreement  
Beautician Agreement  
American Backflow Testing Agreement  
Consonus Pharmacy Agreement  
A Place For Mom Referral Agreement  
National Directory Service Agreement  
EWS Waste Management Agreement  
Telecom Managers Group Agreement  
Northwest Fleet Lease, Corp. (Bus Lease)  
Vigilan Agreement  
Phoenix Textiles Agreement

**EXHIBIT C**  
**TO SUBORDINATION, ASSIGNMENT AND SECURITY AGREEMENT**  
**Licenses**

Seniors Housing Facility Type	(Check all that apply)  Independent Living <input type="checkbox"/> Assisted Living <input checked="" type="checkbox"/> Alzheimer's/Dementia Care <input checked="" type="checkbox"/>
License: Assisted Living Facility License	Holder: ARHC PPKLAOR01 TRS, LLC  Issuer: Oregon Department of Human Services – Seniors and People with Disabilities  Effective Date: March 28, 2013  Expiration Date: February 28, 2015  License renewal frequency: two (2) years  Period to submit renewal application prior to License expiration: 45 days
Residential Care Facility License	Holder: ARHC PPKLAOR01 TRS, LLC  Issuer: Oregon Department of Human Services – Seniors and People with Disabilities  Effective Date: March 28, 2013  Expiration Date: February 28, 2015  License renewal frequency: two (2) years  Period to submit renewal application prior to

	License expiration: 45 days
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**EXHIBIT D**  
**TO SUBORDINATION, ASSIGNMENT AND SECURITY AGREEMENT**

Operating Lease Terms	
Agreement Name and Parties	Lease Agreement by and between Borrower and Operator
Operating Lease Commencement Date	March 28, 2013
Facility Operating Agreement Rent Commencement Date	March 28, 2013
Primary Term of Operating Lease	Commences on the date hereof and expires on April 30, 2025
Renewal Options under Operating Lease	None
Facility Operating Agreement Security Deposit	N/A
Rights or options to purchase, rights of first refusal or rights of first offer	None

Management Agreement Terms	
Agreement Name and Parties	Management Agreement by and between Operator and Manager
Management Agreement Commencement Date	March 28, 2013
Facility Operating Agreement Rent Commencement Date	N/A
Primary Term of Management Agreement	5 years from the date hereof
Renewal Options under Management Agreement	5 years each
Facility Operating Agreement Security Deposit	N/A
Rights or options to purchase, rights of first refusal or rights of first offer	None