

**Limited Guaranty and
Security Agreement**
Section 232

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

OMB Approval No. 2502-0605
(exp. 03/31/2018)

Public reporting burden for this collection of information is estimated to average 1.0 hour(s). This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Warning: Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

This Limited Guaranty and Security Agreement (this “**Guaranty**”), dated as of _____, 20__ (the “**Effective Date**”), is provided by _____ (collectively and singularly, “**Guarantor**”), in favor of _____, a _____ (the “**Lender**”).

I. RECITALS:

A. The Lender is making or has made a mortgage loan (each, a “**Loan**” and collectively, the “**Loans**”) to each entity identified as a “**Borrower**” in Exhibit A, attached hereto and incorporated herein (each, a “**Borrower**” and collectively, the “**Borrowers**”). Each Borrower owns a separate project, as identified in Exhibit A (each, a “**Project**” and collectively, the “**Projects**”).

B. The obligation of each Borrower to repay its Loan is or will be evidenced by a mortgage note or deed of trust note (each, a “**Note**” and collectively, the “**Notes**”) executed by each such Borrower in favor of the Lender. Each Note is or will be secured in part by a healthcare mortgage (or deed of trust), assignment of leases, rents and revenue and security agreement (each, a “**Security Instrument**” and collectively, the “**Security Instruments**”) from the relevant Borrower for the benefit of the Lender.

C. Guarantor owns a direct or indirect interest (collectively, the “**Ownership Interests**”) in each of the Borrowers.

D. Each Note is or will be insured by the U.S. Department of Housing and Urban Development (“**HUD**”), acting by and through the Secretary of HUD under the provisions of Section 232 (pursuant to Section 223(f) or Section 223(a)(7)), of the National Housing Act and the Regulations thereunder (collectively, the “**Act**”).

E. Each Project is or will be subject to a Healthcare Regulatory Agreement – Borrower (each, a “**Regulatory Agreement**” and collectively, the “**Regulatory Agreements**”) between the respective Borrower and HUD (the Security Instruments, the Notes, the Regulatory Agreements, this Guaranty, and any and all other guaranties and/or documents now or hereafter required by the Lender or HUD in connection with any of the Loans, are referred to herein,

collectively, as the “**HUD Loan Documents,**” and, singularly, as a “**HUD Loan Document**”).

II. STATEMENT OF AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor warrants to, and covenants with, the Lender as follows:

1. **Definitions.** In addition to the words and terms defined elsewhere in this Guaranty, the following words and terms shall have the following meanings:

“**Event of Default**” means a monetary default under any Note and/or any other HUD Loan Document which remains uncured after any applicable notice and cure period.

“**Ownership Interests**” means all right, title and interest of Guarantor (whether now owned or hereafter acquired): (a) as a member, partner, shareholder, or other equity interest holder in a Borrower or in an entity owning an equity interest in a Borrower, including all membership interests, partnership interests, shares or other interests now or hereafter issued to or acquired by such Guarantor; and (b) to receive, enforce or collect any and all moneys or property due or to become due, paid, distributed or returned as a member, partner, shareholder or other equity interest holder in a Borrower.

“**Person**” means any individual, corporation, partnership, joint venture, limited liability company, estate, trust or unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

All of the uncapitalized terms contained in this Guaranty which are now or hereafter defined in the Uniform Commercial Code, as adopted in the State of _____ (the “UCC”), shall, unless the context expressly indicates otherwise, have the meanings provided for now or hereafter in the UCC, as such definitions may be enlarged or expanded from time to time by amendment or judicial decision.

2. **Guaranty.** Subject to the limitations contained in Section 28 of this Guaranty, Guarantor hereby unconditionally, absolutely and irrevocably guarantees to the Lender that the cash equivalent of any cash distributions received by, or due to, Guarantor with respect to the Ownership Interests of Guarantor, which cash distribution was received by, or due to, Guarantor within one hundred eighty (180) days of an Event of Default, shall be used to (a) cure any default by any other Borrower; (b) pay any and all costs and expenses incurred by the Lender in the enforcement of any of its rights under this Guaranty, including without limitation reasonable attorneys’ fees; and (c) pay any damage or liability suffered by the Lender, to the extent such arise out of any breach by Guarantor under this Guaranty, including, without limitation, a breach of the responsibilities of Guarantor set forth in Section 7 of this Guaranty and/or a breach of any representation, warranty or covenant set forth in Section 15 of this Guaranty (collectively, the “**Guaranteed Obligations**”). If any such cash distributions are used to satisfy any of the Guaranteed Obligations under clause (a) above, then the amount so paid to the Lender by Guarantor shall be deemed to be an unsecured loan to the Borrower in default, payable only from surplus cash (as defined by Program Obligations), and shall be evidenced solely by a Surplus Cash Note (Form HUD-92223-ORCF or equivalent) with terms and an interest rate approved by HUD in accordance with Program Obligations. The Lender and HUD shall consent and agree to, and document, a termination of a Guaranteed Obligation with respect to a particular Borrower (a “**Partial Release**”), if there is a bona fide sale or assignment by Guarantor of its Ownership Interests in a Borrower to a third party which is not an Affiliate of Guarantor, and such sale or assignment is approved in accordance with Program Obligations. Without limiting the generality of the foregoing, the liability of Guarantor shall extend to all amounts which constitute part of the obligations of a HUD Loan Document and would be owed by a Borrower to the Lender under such HUD Loan Document but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization, or similar proceeding involving a Borrower.

3. **Unconditional and Absolute Guaranty.** Subject to the limitations contained in Section 28 of this Guaranty, Guarantor guarantees that the obligations of the HUD Loan Documents shall be paid, performed and observed strictly in accordance with the terms of the HUD Loan Documents. The obligations of Guarantor under this Guaranty are independent of the obligations of the HUD Loan Documents. The liability of Guarantor under this Guaranty shall be absolute and unconditional, shall not be affected, released, terminated, discharged or impaired, in whole or in part, by, and the Lender may proceed to exercise any right or remedy hereunder, irrespective of:

- 3.1 any lack of genuineness, regularity, validity, legality or enforceability, or the voidability, of any HUD Loan Document or any other agreement or instrument relating thereto;

- 3.2** any amendment, restatement, supplement, change or modification of the terms of any HUD Loan Document;
- 3.3** any change in the time, manner or place of payment, performance or observance of all or any of the obligations or any extensions of time for payment, performance or observance, whether in whole or in part, of the terms of any HUD Loan Document on the part of Guarantor, to be paid, performed or observed, as applicable;
- 3.4** any amendment or waiver of, or any assertion or enforcement or failure or refusal to assert or enforce, or any consent or indulgence granted by the Lender with respect to a departure from, any term of a HUD Loan Document, including, without limiting the generality of the foregoing, the waiver of any default by a Borrower, or the making of any other arrangement with, or the accepting of any compensation or settlement from, a Borrower;
- 3.5** any failure or delay of the Lender to exercise, or any lack of diligence in exercising, any right or remedy with respect to a HUD Loan Document;
- 3.6** any dealings or transactions between the Lender and a Borrower, whether or not Guarantor shall be a party to or cognizant of the same;
- 3.7** the exercise of any right or remedy under a HUD Loan Document, or the obtaining of any judgment against a Borrower, or the taking of any action to enforce the same;
- 3.8** any bankruptcy, insolvency, assignment for the benefit of creditors, receivership, trusteeship or dissolution of or affecting a Borrower;
- 3.9** any exchange, surrender or release, in whole or in part, of any security which may be held by the Lender at any time for or under a HUD Loan Document or with respect to the obligations of a HUD Loan Document;
- 3.10** any other guaranty now or hereafter executed by Guarantor or any other guarantor or the release of any other guarantor from liability for the payment, performance or observance of any of the obligations of a HUD Loan Document or any of the terms of a HUD Loan Document on the part of a Borrower to be paid, performed or observed, as applicable, whether by operation of law or otherwise;
- 3.11** any rights, powers or privileges the Lender may now or hereafter have against any person, entity or collateral with respect to the obligations of a HUD Loan Document;

- 3.12 The consent of the Lender to any assignment or successive assignments of a HUD Loan Document by the applicable Borrower;
- 3.13 the failure to give Guarantor any notices whatsoever;
- 3.14 any other circumstance which might in any manner or to any extent constitute a defense (other than the defenses of prior payment or performance) available to a Borrower, or vary the risk of Guarantor, or might otherwise constitute a legal or equitable discharge or defense available to a surety or guarantor, whether similar or dissimilar to the foregoing;
- 3.15 any and all notice of the creation, renewal or extension of the obligations of a HUD Loan Document; or
- 3.16 the exercise of any right or remedy under a HUD Loan Document, or the obtaining of any judgment against a Borrower, or the taking of any action to enforce the same;

all from time to time before or after any default by a Borrower under a HUD Loan Document, and with or without further notice to or assent from Guarantor. This Guaranty shall continue to be effective or be reinstated, as the case may be, and the rights of the Lender hereunder shall continue with respect to, any obligation of a HUD Loan Document at any time paid by a Borrower which shall thereafter be required to be restored or returned by the Lender upon the insolvency, bankruptcy or reorganization of a Borrower, or for any other reason, all as though such obligation (or portion thereof) had not been so paid or applied.

4. **Security Interest.** Guarantor hereby grants to the Lender a continuing first priority security interest in and to all cash distributed to the Guarantor as a result of the Ownership Interests of Guarantor (the “**Secured Collateral**”); provided, however, the security interest shall be deemed released as to a particular cash distribution if within one hundred eighty (180) days after the date of such distribution to Guarantor no Event of Default has occurred. Guarantor hereby authorizes the Lender to file UCC financing statements, UCC financing statement amendments and UCC financing statement continuation statements with respect to the Secured Collateral.

5. **Event of Default.** Upon and during the continuance of any Event of Default, or if the Lender has accelerated any obligation of a HUD Loan Document, the Lender may, at its option:

- 5.1. proceed directly and at once, without further notice, against Guarantor, without proceeding against any Borrower, or any other Person, with respect to any or all of the Guaranteed Obligations; and/or

5.2. exercise any or all of its rights and remedies under this Guaranty (including the sale or other disposition of any or all of the Secured Collateral), any Note, any other HUD Loan Document and/or applicable law.

6. **Collateral.** The collateral in which a security interest is hereby granted includes all of the rights, titles and interests of Guarantor in and to the Secured Collateral.

7. **Certain Guarantor Responsibilities.** Until the Termination of this Guaranty in accordance with Section 16 of this Guaranty, Guarantor shall:

7.25296. defend the Secured Collateral against all claims of all Persons at any time claiming any of the Secured Collateral or claiming any interest therein adverse to the Lender except (i) current taxes and assessments not yet due and payable; and (ii) any liens granted to the Lender to secure the repayment or performance of the obligations of the HUD Loan Documents (collectively, “**Permitted Liens**”);

7.25297. execute and deliver such supplemental instruments as the Lender shall require from time to time for the purpose of confirming and perfecting the security interest of the Lender in any or all of the Secured Collateral within ten (10) days after written request therefor by the Lender;

7.25298. execute and deliver a Reaffirmation and Amendment of Limited Guaranty and Security Agreement in the form of Exhibit D, attached hereto and incorporated herein, with such modifications as may be required by the Lender and/or HUD (each, a “**Reaffirmation and Amendment**”), to amend this Guaranty as Loans are made and/or paid off and/or to reflect corresponding changes to the Secured Collateral;

7.25299. at its expense and upon the reasonable request of the Lender, make available to the Lender, at reasonable times and upon reasonable notice, any and all of the books and records of such Guarantor pertaining to the Secured Collateral;

7.25300. notify the Lender at least thirty (30) days in advance in writing of any change in the exact legal name of Guarantor as set forth in Exhibit B, attached hereto and incorporated herein, to this Guaranty;

7.25301. not change its state of organization or form of organization unless (i) Guarantor gives the Lender at least thirty (30) days advance notice of the change, and (ii) the Lender maintains a continuous, first priority security interest in the Secured Collateral, subject only to the Permitted Liens, and maintains all of the benefits, rights, and interests under this Guaranty following such change; and

7.25302. pay all expenses, including reasonable attorneys' fees, incurred by the Lender in the exercise (including enforcement) of any of the rights or remedies of the Lender under this Guaranty or applicable law within ten (10) days after the receipt of an invoice and supporting documentation thereof; and Guarantor agrees that such expenses and fees shall constitute part of the Guaranteed Obligations and be secured by the Secured Collateral.

8. **Certain Lender Rights.** To protect, perfect, or enforce, from time to time, the rights or interests of the Lender in the Secured Collateral, the Lender may, in its absolute discretion (but without any obligation to do so): (a) discharge any liens at any time levied or placed on the Secured Collateral, and/or (b) obtain any record from any service bureau and pay such service bureau the cost thereof. All costs and expenses reasonably incurred by the Lender in exercising its discretion under this Section 8 shall be part of the Guaranteed Obligations secured by the Secured Collateral.

9. **Power of Attorney.** Guarantor hereby makes, constitutes and appoints the Lender (with full power of substitution) its true and lawful attorney in fact (a) to execute and/or authenticate on behalf of Guarantor any documents and notices reasonably necessary to preserve or perfect the security interest granted herein, and (b) upon Partial Release or Termination pursuant to Section 16 of this Guaranty, to execute and/or authenticate on behalf of Guarantor any documents and notices reasonably necessary to release (or partially release, as applicable) the security interest granted herein. It is understood and agreed that the foregoing power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked.

10. **Waivers.** Guarantor hereby waives and relinquishes to the fullest extent now or hereafter not prohibited by applicable law:

10.1. All rights and remedies accorded by applicable law to guarantors, or sureties, including, without limitation, any extension of time conferred by any law now or hereafter in effect;

10.2. any right or claim of right to cause a marshaling of the assets of any Borrower, or to cause the Lender to proceed against any of the other security for the Guaranteed Obligations or the obligations of any Borrower under a HUD Loan Document, before proceeding under this Guaranty against Guarantor, or, if there shall be more than one guarantor, to require the Lender to proceed against any other guarantor or any guarantors in any particular order;

10.3. all rights and remedies related to any Borrower and the relevant Loan, including, but not limited to, any rights of subrogation, contribution, reimbursement, exoneration or indemnification pursuant to any agreement, express or implied, or now or hereafter accorded by applicable law to indemnitors, guarantors, sureties or accommodation parties;

10.4. notice of the acceptance of this Guaranty, presentment, demand for payment, protest, notice of protest, or any and all notice of nonpayment, nonperformance, nonobservance or default, or other proof or notice of demand (except those expressly required by this Guaranty);

10.5. promptness, diligence, and presentment and demand for payment, performance or observance of any obligations of the HUD Loan Documents;

10.6. protest, notice of dishonor, notice of default and any other notice with respect to any obligations of the HUD Loan Documents and/or this Guaranty;

10.7. any demand for payment under this Guaranty;

10.8. any requirement that the Lender exhaust any right or remedy or take any action against a Borrower or any collateral or other security available to it;

10.9. the right to interpose all substantive and procedural defenses of the law of guaranty, indemnification and suretyship, except the defenses of prior payment or prior performance by a Borrower of any obligations of the HUD Loan Documents which Guarantor is called upon to pay or perform under this Guaranty;

10.10. the right to interpose any setoff or counterclaim of any nature or description in any action or proceeding arising hereunder or with respect to this Guaranty;

10.11. the pleading of any statute of limitations as a defense to the obligations of Guarantor hereunder; and

10.12. the right to a trial by jury in any in any action or proceeding of any kind arising on, under, out of, or by reason of or relating, in any way, to this Guaranty or the interpretation, breach or enforcement thereof.

GUARANTOR AND THE LENDER MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS GUARANTY, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY OF THE OTHER HUD LOAN DOCUMENTS OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER IS GIVEN AS A MATERIAL INDUCEMENT TO THE

LENDER TO ACCEPT THIS GUARANTY AND TO MAKE THE LOANS.

11. Waiver of Right Against Borrowers. Except as described in Section 2 of this Guaranty, to the fullest extent permissible by law, Guarantor hereby irrevocably waives any claim or other rights that it may now or hereafter acquire against a Borrower that arises from the existence, payment, performance or enforcement of any obligations of Guarantor under this Guaranty or any other documents executed in connection therewith, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Lender against a Borrower, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from a Borrower, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right. If any amount shall be paid to Guarantor in violation of the preceding sentence at any time prior to the indefeasible cash payment in full of all amounts payable under this Guaranty, such amount shall be held in trust for the benefit of the Lender and shall forthwith be paid to the Lender to be credited and applied to all amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of this Guaranty, or to be held as collateral for any amounts payable under this Guaranty thereafter arising. Guarantor hereby acknowledges that it has and will receive direct and indirect benefits from the Mortgages and that the waiver set forth in this Section 11 is knowingly made in contemplation of such benefits.

12. Cumulative Rights. The rights of the Lender under this Guaranty shall be in addition to and not in limitation of all of the rights and remedies of the Lender under the other HUD Loan Documents. All rights and remedies of the Lender shall be cumulative and may be exercised in such manner and combination as the Lender may determine.

13. No Impairment. The liability of Guarantor under this Guaranty and the other HUD Loan Documents shall in no way be limited or impaired by:

13.1. any extensions of time for performance required by any of the HUD Loan Documents;

13.2. any amendment to or modification of any of the HUD Loan Documents;

13.3. any sale or assignment of the HUD Loan Documents;

13.4. except as expressly provided in this Guaranty, any exculpatory, or nonrecourse, or limited recourse, provision in any of the HUD Loan Documents limiting the recourse of the Lender to any property or limiting the rights of the Lender to a deficiency judgment against any Borrower or any other Person;

13.5. the accuracy or inaccuracy of any of the representations or warranties made by or on behalf of any Borrower or Guarantor, under any HUD Loan Document or otherwise;

13.6. the release of any Borrower, or any other Person, from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the HUD Loan Documents by operation of law, the voluntary act of the Lender, or otherwise, except as specifically provided in Section 16 of this Guaranty;

13.7. the filing of any bankruptcy or reorganization proceeding by or against any Borrower;

13.8. the release or substitution in whole or part of any collateral or security for the Guaranteed Obligations;

13.9. the failure of the Lender to otherwise perfect, protect, secure, or insure any security interest or lien given as security for the Guaranteed Obligations;

13.10. the release of any other party now or hereafter liable upon or in respect of this Guaranty or any of the other HUD Loan Documents; or

13.11. the invalidity or unenforceability of all or any portion of any of the HUD Loan Documents as to any Borrower or any other Person.

Any of the foregoing may be accomplished with or without notice to Guarantor or any Borrower and with or without consideration.

14. **Delay Not Waiver.** No delay on the part of the Lender in exercising any right, power or privilege hereunder or under any of the HUD Loan Documents and/or this Guaranty shall operate as a waiver of any such privilege, power or right. No waiver by the Lender in any instance shall constitute a waiver in any other instance.

15. **Representations, Warranties and Covenants.** Guarantor represents, warrants and covenants to the Lender for the express purpose of inducing the Lender to make the Loans, to accept this Guaranty, and to otherwise complete the transactions contemplated by the HUD Loan Documents as to Guarantor and each Borrower that, as of the date of this Guaranty and at all times thereafter until the obligations of the HUD Loan Documents are repaid in their entirety and all Guaranteed Obligations to the Lender have been satisfied in full:

15.1. **Organization.** Guarantor is either: (a) an entity of the type listed in Exhibit B and existing under the laws of the state listed in Exhibit B with its chief executive office and mailing address located at the address set forth in Exhibit B (or such other address as hereafter specified in a notice given to the Lender in accordance herewith) or (b) a natural person who

resides at the address set forth in Exhibit B (or such other address as hereafter specified in a notice given to the Lender in accordance herewith);

15.2. Valid and Binding. The obligations of Guarantor pursuant to this Guaranty constitute legal, valid and binding obligations of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency and similar laws of general application affecting the rights and remedies of creditors and, with respect to the availability of the remedies of specific enforcement, subject to the discretion of the court before which any proceeding therefor may be brought;

15.3. Ownership. Guarantor owns the Ownership Interests set forth in Exhibit B and is the sole, legal and beneficial owner of the Secured Collateral attributable to it, free from any pledge, mortgage, hypothecation, lien, charge, encumbrance or any security interest therein, except for Permitted Liens;

15.4. No Governmental Action or Approval. No authorization, approval or other action by, and no notice to or filing with any governmental authority is required (other than any filings required under the UCC) either: (a) for the creation of the security interest on the Secured Collateral granted pursuant to this Guaranty or for the execution, delivery or performance of this Guaranty by such Guarantor, or (b) except as may be required by the HUD Loan Documents, Program Obligations and/or laws affecting the offering and sale of securities generally, for the exercise by the Lender of the voting or other rights provided for in this Guaranty or the remedies in respect of the Secured Collateral pursuant to this Guaranty;

15.5. No Restrictions on Transfer. Except as set forth in Exhibit A, none of the Secured Collateral is subject to any restrictions on transfer, right of first refusal, purchase or similar option or restriction or any other like adverse claim;

15.6. Exhibits. All of the information set forth in Exhibits A, B and C is true, correct and complete, and all of the information set forth in any amendments to any of such exhibits shall be true, correct and complete;

15.7. Solvency. Guarantor is solvent and is not rendered insolvent by the obligations undertaken in this Guaranty. Guarantor (a) is not contemplating either the filing of a petition or proceeding under any state or federal bankruptcy or insolvency or reorganization laws or the liquidating of all or a major portion of the assets of such Guarantor, and (b) as of the date of this Guaranty, such Guarantor has no knowledge of

any such petition or proceeding being filed against such Guarantor as of the date hereof;

15.8. Material Economic Benefit. The making of the Loans will constitute a material economic benefit to such Guarantor; and

15.9. Representation. Guarantor has read and fully understands each and every term, covenant, condition and provision of this Guaranty, and Guarantor was represented by competent counsel in the negotiation, execution and delivery of this Guaranty.

16. Partial Releases; Termination.

16.1. Partial Releases. Upon the full performance, payment and satisfaction of the Guaranteed Obligations undertaken with respect to a particular Borrower, and provided that (a) (i) the relevant Project is no longer subject to a Loan held or insured by HUD and (ii) no Event of Default exists; or (b) HUD has authorized a transfer or assumption of the Loan to an independent third party entity, the Lender shall release the security interest on the Secured Collateral related to such Borrower granted hereunder, which release shall be granted upon the Lender receiving the written consent of HUD for such release (subject to satisfaction of all conditions imposed by HUD) (a “**Partial Release**”), and, subject to any conditions imposed by HUD, the Lender shall execute and deliver to Guarantor documentation acknowledging such release, and shall duly assign and deliver to Guarantor such of the Secured Collateral as has been released and is in the possession of the Lender, pursuant to one or more instruments of re-conveyance prepared by the Lender, and shall deliver UCC termination statements with respect to its liens on the Secured Collateral related to such Borrower that is to be so released. Guarantor, with the consent of the Lender, shall promptly amend Exhibit A, Exhibit B and/or Exhibit C to this Guaranty to reflect the corresponding changes thereto, as provided in Section 7.3 of this Guaranty.

16.2. Termination. This Guaranty will terminate (“**Termination**”) upon the full performance, payment and satisfaction of all of the Guaranteed Obligations and the termination of all HUD Loan Documents or upon the death of the Guarantor, if such Guarantor is an individual.

17. Taxes.

17.1 Any and all payments made by Guarantor hereunder shall be made free and clear of, and without deduction for, any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto (including, without limitation, penalties, interest, additions to tax and expenses) imposed by governmental entities, other

than taxes on, or measured by, the net or gross income of the Lender imposed by the United States or any political subdivision thereof, or by any other jurisdiction in which the Lender is resident by reason of the organization or place of management and control of the Lender (collectively, “**Income Taxes**”) (all such taxes, levies, imposts, deductions, charges, withholdings and liabilities, excluding income taxes, being collectively called “**Taxes**”).

- 17.2** Guarantor shall pay any present or future stamp or documentary taxes, intangible taxes or any other sales, excise or property taxes, charges or similar levies which arise from any payment made with respect to this Guaranty, other than Income Taxes (collectively, “**Other Taxes**”).
- 17.3** If Guarantor shall be required by law to deduct or withhold any Other Taxes from or in respect of any sum payable hereunder to the Lender, then: (a) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 17.3) the Lender shall receive an amount equal to the sum the Lender would have received had no such deductions been made; (b) Guarantor shall make such deductions; (c) Guarantor shall pay the full amount deducted to the relevant taxation, or other, authority in accordance with applicable law; and (d) within ten (10) days after the date of such payment, Guarantor shall furnish to the Lender the original or a certified copy of a receipt evidencing such payment.
- 17.4** Guarantor agrees to indemnify, defend and hold the Lender, its successors and assigns, harmless from and against the full amount of Other Taxes (including any Other Taxes on amounts payable under this Section 17.4) paid by the Lender with respect to any payment made by Guarantor under this Guaranty, whether or not such Other Taxes were correctly or legally asserted. Such indemnification obligation shall begin to accrue the date the Lender makes written demand therefor.
- 17.5** If Guarantor makes any additional payment to, or for the account of, the Lender, pursuant to Sections 17.2, 17.3 or 17.4 of this Guaranty, Guarantor shall pay to the Lender an amount equal to any increase in the Income Taxes, which the Lender certifies in good faith resulted or will result (after due consideration of any related tax benefits) from any additional payment by Guarantor under Sections 17.2, 17.3 or 17.4 of this Guaranty and any payment by Guarantor under this Section 17.5.
- 17.6** Without prejudice to the survival of any other agreement or obligation of Guarantor under this Guaranty, the agreements and obligations of Guarantor under this Section 17 shall survive so long as any relevant limitations period with respect to any Tax or Other Tax remains open, without giving any effect to any agreement to the extension or waiver of

the applicable statute of limitations or for fraud.

18. Payments. Any and all amounts required to be paid by Guarantor hereunder shall be paid in lawful money of the United States of America and in immediately available funds to the Lender, on demand by the Lender, and at the address identified in Section 20 of this Guaranty. All payments by Guarantor shall be made for the benefit of the Lender in accordance with the terms herein set forth without setoff or counterclaim.

19. Estoppel Certificate. Guarantor agrees that it shall, at any time and from time to time, within ten (10) days following a request by the Lender and/or HUD, execute and deliver to the Lender and/or HUD a statement certifying that this Guaranty is unmodified and in full force and effect (or if modified, that the same is in full force and effect as modified and stating such modifications). Any such certificate required pursuant to this Section 19 shall be prepared by the requesting party and delivered to such Guarantor for its execution and delivery.

20. Notices. Any notice required, permitted or contemplated hereunder shall, except as expressly provided in this Guaranty, be in writing and addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder and shall be deemed validly delivered if actually received or if hand delivered or sent by recognized overnight delivery service, electronic mail or certified mail, postage prepaid and return receipt requested, addressed to the parties at the addresses set forth below, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon the earlier of actual receipt or, if sent by certified mail, three (3) business days after the date of mailing, or, if sent by overnight delivery service, one (1) business day after the date deposited with such overnight delivery service.

If to the Lender:

c/o _____

Attn: _____

Email: _____

If to Guarantor:

c/o _____

Attn: _____

Email: _____

21. Amendments in Writing. No amendment of this Guaranty shall be effective unless the same shall be in writing and signed by the Lender and Guarantor. No waiver

of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No delay on the part of the Lender in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights and no notice to or demand on Guarantor shall be deemed to be a waiver of the obligations of Guarantor or of the right of the Lender to take further action without notice or demand. No amendments to this document shall be effective without the consent of HUD. For purposes of effecting this provision, HUD is hereby made a third-party beneficiary of this Section 21.

22. **No Oral Change.** No provision of this Guaranty may be changed, waived, discharged, or terminated orally (in person or by telephone) or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver or discharge or termination is sought.

23. **Parties Bound; Benefit.** This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until payment, performance and/or observance in full of the obligations and all other amounts payable under this Guaranty, (ii) be binding upon Guarantor, its successors and assigns, and (iii) inure to the benefit of and be enforceable by the Lender and its successors, transferees and assigns or by any subsequent holder of the interest of the Lender in any Note and of any owner of a participant interest therein. Wherever in this Guaranty reference is made to Guarantor or Lender, the same shall be deemed to refer also to the then successor or assign of such Guarantor or Lender.

24. **Partial Invalidity.** Each of the provisions hereof shall be enforceable against Guarantor to the fullest extent now or hereafter not prohibited by applicable law. The invalidity or unenforceability of any provision hereof shall not limit the validity or enforceability of each other provision hereof.

25. **Governing Law.** This Guaranty and the rights and obligations of the parties hereunder shall in all respects be governed by and construed and enforced in accordance with the internal laws of the State of _____, without giving effect to principles of conflicts of law.

26. **Financing Statements.** Guarantor hereby authorizes the Lender at any time and from time to time to file in any filing office in any jurisdiction any initial financing statements and/or any amendments thereto required to perfect or continue the perfection in the security interests granted hereby, including financing statements that: (a) indicate the Secured Collateral as being of an equal or lesser scope or with greater detail and (b) provide any other information required by Part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Guarantor is an organization, the type of organization and any organizational identification number issued to Guarantor. Guarantor hereby authorizes the Lender at any time and from time to time to correct or complete, or to cause to be corrected or completed, any financing statements, continuation statements or other such documents as have been filed naming Guarantor as debtor and the Lender as secured party. The Lender is hereby authorized to give notice to any creditor or any

other Person as may be necessary or desirable under applicable laws to evidence, protect, perfect, or enforce the security interest granted to the Lender in the Secured Collateral.

27. **Interpretation.** The definition of any document, instrument or agreement includes all schedules, attachments and exhibits thereto and all renewals, extensions, supplements, restatements and amendments thereof. The recitals to this Guaranty and all exhibits and schedules attached to this Guaranty are incorporated into, made and form an integral part of, this Agreement for all purposes. As used in this Agreement, “hereunder,” “herein,” “hereto,” “this Guaranty” and words of similar import refer to this entire document; “including” is used by way of illustration and not by way of limitation, unless the context clearly indicates the contrary; the singular includes the plural and conversely; and any action required to be taken by Guarantor is to be taken promptly, unless the context clearly indicates the contrary.

28. **Limitation of Guarantor Liability.** The Lender agrees that the liability of Guarantor under this Guaranty shall be limited to the cash equivalent of the interest of Guarantor in the Secured Collateral and such other collateral, if any, as may now or hereafter be given to secure the payment of the Guaranteed Obligations, and no other property or assets of Guarantor (or any manager, director, employee, member, officer or shareholder of such Guarantor) shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the Lender or under this Guaranty or for the performance of any of the covenants or warranties contained herein; provided, however, that the foregoing provisions of this Section 28 shall not (i) constitute a waiver of any obligation evidenced by any Note or secured by any HUD Loan Document, (ii) limit the right of the Lender to name Guarantor as a party defendant in any action or suit for judicial foreclosure and sale under any HUD Loan Document so long as no judgment under this Guaranty in the nature of a deficiency judgment shall be enforced against Guarantor except to the extent of the Secured Collateral or such other collateral, (iii) affect in any way the validity or enforceability of any other guaranty (whether of payment and/or performance) or indemnity agreement given to the Lender in connection with the Loans or the liability of Guarantor under any Regulatory Agreement, (iv) constitute a waiver by the Lender of any rights to reimbursement for actual, or out-of-pocket, losses, costs or expenses against Guarantor by reason of Guarantor committing fraud in connection with the HUD Loan Documents and/or the transactions contemplated hereby or thereby, or making any intentional material misrepresentation in any HUD Loan Document, or (v) constitute a waiver or limit the rights of the Lender to pursue the cash equivalent of the Secured Collateral, regardless of whether such funds are determined to be untraceable, have been reinvested in other property or assets of Guarantor, or are deemed to be subject to a prior lien of a third party.

29. **Joint and Several.** Each party executing this Guaranty shall be jointly and severally liable hereunder as a Guarantor.

30. **Requirement of Guaranty.** Guarantor is executing and delivering this Guaranty in order to (i) induce the Lender to make the Loans, and (ii) induce HUD to insure the Mortgage Loans. Guarantor acknowledges, agrees, represents and warrants that Guarantor will benefit from the making of the Loans and that such benefit is sufficient consideration for the entry of Guarantor into this Guaranty.

31. **Consents to Transfer and Waiver of Transfer Restrictions.** Guarantor hereby (a) consents to (i) the execution and delivery of this Guaranty, (ii) the grants of security interests in, and the assignments of, the Secured Collateral by Guarantor pursuant to this Guaranty, (iii) the exercise by the Lender of any and/or all of the rights and remedies of the Lender under this Guaranty and (iv) any and all sales, assignments and/or other transfers made in connection with the exercise by the Lender of its rights and remedies under this Guaranty (collectively, the “**Transfer Restrictions**”) with respect to (i) the execution and delivery of this Guaranty by Guarantor, (ii) the grants of security interests in, and the assignments of, the Secured Collateral by Guarantor pursuant to this Guaranty, (iii) the exercise by the Lender of any and/or all of the rights and remedies of the Lender under this Guaranty and (iv) any and all sales, assignments and/or other transfers made in connection with the exercise by the Lender of its rights and remedies under this Guaranty.

32. **Attached Exhibits.** The following Exhibits are attached to this Guaranty:

- Exhibit A:** Projects and Borrowers
- Exhibit B:** Guarantor and Ownership Interests
- Exhibit C:** Ownership of Borrower Parties
- Exhibit D:** Reaffirmation and Amendment of Limited Guaranty and Security Agreement

IN WITNESS WHEREOF, this Guaranty has been duly executed and delivered as of the date first written above.

Guarantors:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Accepted:

Lender:

By: _____
Name: _____
Title: _____

EXHIBIT A

Projects and Borrowers

Project Name	FHA Project Number	Borrower

EXHIBIT B

Guarantor and Ownership Interests

Guarantor Name and Address	Guarantor State of Formation and Type of Entity / State of Residence	Borrower	Ownership Interests/ Member Interests

EXHIBIT C

Ownership of Borrower Parties

EXHIBIT D

[_____] REAFFIRMATION AND AMENDMENT OF LIMITED GUARANTY AND SECURITY AGREEMENT

This [_____] Reaffirmation and Amendment of Limited Guaranty and Security Agreement (this “**Reaffirmation**”), dated as of _____, 20__ to be effective as of _____, 20__ (the “**Effective Date**”), is provided pursuant to the terms and conditions of that certain Limited Guaranty and Security Agreement dated as of _____, 20__ (as the same has been reaffirmed and/or amended to date, the “**Guaranty**”) by the individuals (if any) and entities identified on Schedule I hereto as “**Continuing Guarantors**,” [and “**Withdrawing Guarantors**”], and is entered by and among the entities identified on Schedule I hereto as “**Continuing Guarantors**,” [and] [“**Withdrawing Guarantors**”] [and] [“**New Guarantors**”], and _____, a _____ (the “**Lender**”).

FOR VALUE RECEIVED, Continuing Guarantors [, “**Withdrawing Guarantors**”] [, “**New Guarantors**”] and the Lender hereby unconditionally agree as follows:

33. **Definitions.** Any capitalized term used but not defined herein shall have the meaning ascribed thereto in the Guaranty. All of the uncapitalized terms contained in this Reaffirmation which are now or hereafter defined in the UCC will, unless the context expressly indicates otherwise, have the meanings provided for now or hereafter in the UCC, as such definitions may be enlarged or expanded from time to time by amendment or judicial decision.

34. **Amendments.** [Exhibit A to the Guaranty is hereby deleted in its entirety and replaced with Schedule II attached hereto.] [Exhibit B to the Guaranty is hereby deleted in its entirety and replaced with Schedule III attached hereto.] [Exhibit C to the Guaranty is hereby deleted in its entirety and replaced with Schedule IV attached hereto.]

35. **Reaffirmation.** Each Continuing Guarantor hereby reaffirms the Guaranty in its entirety and incorporates it herein by this reference as if set forth in full.

36. **Guaranty.** [Each New Guarantor hereby joins in the Guaranty in its entirety and incorporates it herein by this reference as if set forth in full. Each New Guarantor shall be a “**Guarantor**” under the Guaranty from and after the Effective Date and shall be jointly and severally liable with the Continuing Guarantors for all of the Guaranteed Obligations.] Without limiting the generality [of the foregoing or] of the reaffirmation set forth in Section 3 of this Reaffirmation, and subject to the limitations, terms and conditions set forth in the Guaranty, each Continuing Guarantor [and each New Guarantor], as a primary party and not merely as a surety, unconditionally and irrevocably, jointly and severally, guarantees the prompt and full payment (and not merely the collectability), performance and observance of all of the Guaranteed Obligations.

37. **Representations, Warranties and Covenants.** In addition to the representations, warranties and covenants set forth in Section 15 of the Guaranty, each Continuing Guarantor [and each New Guarantor] represents, warrants and covenants to the Lender for the express purpose of inducing the Lender to accept this Reaffirmation, and to otherwise complete the transactions contemplated by the HUD Loan Documents as to Guarantors and the Borrowers that, as of the date hereof, each Guarantor's percentage share of the Ownership Interests of each Borrower is set forth on Schedule II attached hereto.

Each Continuing Guarantor [and each New Guarantor] hereby represents, warrants and covenants that (a) each of the representations, warranties and covenants set forth in Section 15 of the Guaranty is true and correct as of the Effective Date and (b) Exhibits A, B and C to the Guaranty, as modified by the Schedules attached to this Reaffirmation, are true and correct as of the Effective Date.

38. **[Withdrawing Guarantors.** Each Withdrawing Guarantor is hereby released from any liability with respect to the Guaranteed Obligations. Each Continuing Guarantor [and each New Guarantor] consents to the foregoing release.]

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Reaffirmation to be duly executed as of the day and year first above written.

Continuing Guarantors:

By: _____

Name: _____

Title: _____

[New Guarantors:

By: _____

Name: _____

Title: _____]

[Withdrawing Guarantors:

By: _____

Name: _____

Title: _____]

Accepted:

Lender:

HUD-APPROVED LENDER

By: _____

Name: _____

Title: _____

Schedule I to
[_____] Reaffirmation and Amendment of Support Guaranty and Security Agreement

Continuing Guarantors:

[New Guarantors:]

[Withdrawing Guarantors:]

Schedule II to
[_____] Reaffirmation and Amendment of Support Guaranty and Security Agreement

EXHIBIT A

Projects and Borrowers

Project Name	FHA Project Number	Borrower

*Denotes New Project added by this Reaffirmation.

Schedule III to
 [_____] Reaffirmation and Amendment of Support Guaranty and Security Agreement

EXHIBIT B

Guarantors and Ownership Interests

Guarantor Name and Address	Guarantor State of Formation and Type of Entity / State of Residence	Borrower	Ownership Interests

*Denotes New Guarantor added by this Reaffirmation.

Schedule IV to
[_____] Reaffirmation and Amendment of Support Guaranty and Security Agreement

EXHIBIT C

Ownership of Borrower Parties

Borrower	State of Formation/ Type of Entity	Equity Owners/ Percentage Interests

*Denotes Borrower added by this Reaffirmation.